

## CASE DECISION LIST

June 6, 2024

**112631** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
RONALD I. FREDERICK, ET AL. v BLUEGREEN VACATIONS UNLIMITED, INC.

Affirmed.

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

**KEY WORDS:** *Federal Arbitration Act; 9 U.S.C. 1; agreement to arbitrate; delegation clause.*

*The parties entered into a purchase agreement regarding a timeshare property. Plaintiffs filed suit, alleging fraud, violations of the consumer sales practices act, and misrepresentation among other causes of action. The court granted the defendant's motion to compel arbitration. Upon review, we find that the court did not err or abused its discretion in compelling arbitration, because the delegation clause within the arbitration agreement was enforceable, and dictated that "gateway issues," such as arbitrability, are to be decided in arbitration.*

**112642** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CURTIS GUFFIE

Affirmed.

Kathleen Ann Keough, A.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Murder; conspiracy; music video; ambush; inference stacking; self-defense; transferred intent self-defense; jury instructions; double hearsay; confrontation clause; excited utterance; hearsay; rap lyrics; ballistic; flight instruction; cumulative error.*

*Appellant's convictions upheld where the state presented direct and circumstantial evidence that appellant conspired with individuals to set up and ambush the victims at an abandoned church during a music video. State did not engage in impermissible inference stacking because each inference was supported by the evidence. Jury properly rejected appellant's self-defense claim because the evidence established that the appellant contributed to creating the situation giving rise to the affray, and appellant did not have a bona fide belief that he was in imminent danger of death or serious bodily harm. Trial counsel was not ineffective for failing to seek a jury instruction on transferred intent self-defense, nor did the trial court commit plain error in failing to instruct the jury on transferred intent self-defense because the jury rejected that appellant acted in self-defense. Moreover, trial counsel successfully sought a self-defense jury instruction that permitted the jury to consider appellant's actions in light of the situation he perceived from all*

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individuals present. Trial court did not abuse its discretion in (1) denying appellant's attempt to introduce double hearsay, (2) permitting a detective to testify about non-testimonial, excited utterance statements made by a victim who did not testify, (3) admitting rap lyrics penned by appellant hours after the shooting, and (4) permitting a detective to testify about shell casings and a ballistic match from a prior murder.

**112688** GARFIELD HTS. MUNI. C Criminal Muni. & City  
CITY OF GARFIELD HEIGHTS v CORNEZE SMITH

Affirmed.

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

**KEY WORDS:** *Aggravated menacing; R.C. 2903.21(A); sufficiency; manifest weight; admissibility; evidence; Evid.R. 401; Evid.R. 403(A); Evid.R. 701; victim impact; abuse of discretion; prejudice.*

**Judgment affirmed.** *The court properly denied Smith's Crim.R. 29 motion for acquittal because his aggravated menacing conviction was supported by sufficient evidence. Furthermore, his conviction was not against the manifest weight of the evidence. Finally, the court did not abuse its discretion in allowing the victim's testimony about obtaining protection order, her son's belief that Smith was going to shoot his mom, and her other son's testimony that the incident impacted him and he wished it never happened.*

**112712** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v FREDERICK E. BARNES

Vacated.

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

**KEY WORDS:** *Restitution; Marsy's Law; victim; sentenced to time served; direct appeal; res judicata; void; jurisdiction; double jeopardy; final appealable order; interlocutory appeal.*

**Judgment vacated.** *Defendant's interlocutory appeal from an order scheduling a restitution hearing is a final appealable order. The denial of defendant's interlocutory appeal in this case would force him to "run the gauntlet" a second time before an appeal could be taken because if the defendant waits to file an appeal following the second restitution hearing, he will be precluded from meaningful review and will not be afforded appropriate relief in the future. Under Brasher II, we find the trial court was without jurisdiction to order a restitution hearing in May 2023 after the defendant was sentenced to time served in November 2018. While the victim did initially file a direct appeal, she subsequently dismissed the appeal,*

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**opting instead to pursue a writ action. According to Brasher II, the victim forfeited her right to challenge the sentencing order when she dismissed her direct appeal because the trial court's initial judgment on the defendant's sentence - devoid of any order of restitution to the victims - became final, and res judicata attached. Moreover, when the trial court sentenced the defendant to time served, the court lost any jurisdiction to modify the sentence. Therefore, the trial court's April 27, 2023 journal entry is void and is hereby vacated.**

**113021** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DEONTE LASHAWN CARTER

Affirmed and remanded.

Anita Laster Mays, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Aggravated robbery, R.C. 2911.01(A)(1), circumstantial evidence, sufficiency of the evidence, manifest weight of the evidence.**

**Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Circumstantial evidence and direct evidence carry equal weight.**

**113032** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MICHAEL MOBLEY, ET AL. v NERIS KLIMAS, ET AL.

Affirmed.

Lisa B. Forbes, P.J., Michael John Ryan, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS: Breach of contract; fraud; professional negligence; breach of fiduciary duty; judgment on the pleadings; Civ.R. 12(C); failure to disclose; statute of limitations.**

**The court did not err by granting defendant's motion for judgment on the pleadings. Plaintiff's claims concerning failure to disclose water issues at real property they purchased were barred by the statute of limitations. Allegations in the complaint showed that plaintiffs knew about the water issues prior to signing the purchase agreement.**

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**113147** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE A.H.W.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Application to establish parenting plan, continuance, failure to proffer testimony, reopening of hearing, allocation of parental rights and responsibilities, abuse of discretion.*

*Father filed an application to establish a shared parenting plan. Prior to hearing, Mother moved for continuance because witnesses would not be available. Magistrate denied the motion and held a hearing as to the only issue contested, the parenting schedule. Magistrate issued a decision adopting Father's shared parenting plan that the juvenile court adopted over Mother's objections.*

*Mother filed objections to the magistrate's decision. She argued that the magistrate should have granted her a continuance and asked the juvenile court to reopen the hearing and take new evidence in light of Father's post-hearing messages to her. She also argued that the magistrate erred in adopting Father's parenting schedule because it was not in the child's best interest because it deviated from the court's standard parenting time schedule and it gave parenting time to Father when he was at work.*

*The juvenile court did not err in overruling Mother's objections. The decision to grant a continuance or reopen a hearing is reviewed for an abuse of discretion. Juvenile court found that Mother did not proffer the witness testimony or explain how the post-hearing messages would affect the outcome of the hearing; as such, Mother did not demonstrate the juvenile court abused its discretion. Further, by failing to proffer testimony, Mother forfeited the right to contest the denial of motion to continue the hearing.*

*The juvenile court's decision concerning the allocation of parental rights and responsibilities will not be disturbed absent an abuse of discretion. Adoption of the Father's parenting schedule was not an abuse of discretion where the court considered the relevant factors to determine the best of the child.*

**113186** PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
CARL G. MCMAHON v ANDREA M. COOKE, ET AL.

Dismissed.

Kathleen Ann Keough, A.J., Mary Eileen Kilbane, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Dismissed; moot; stay; exception to the mootness doctrine; satisfaction of judgment.*

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**Appeal dismissed as moot where record demonstrates that appellant voluntarily satisfied the judgment rendered against her without seeking a stay prior to the execution and payment of the judgment. Appellant's conduct did not display "a reservation of the right of appeal" for an exception to the general rule of the mootness doctrine to apply.**

**113190** PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
CARL G. MCMAHON v ANDREA M. COOKE, ET AL.

Affirmed in part; vacated in part.

Frank Daniel Celebrezze, III, J., and Kathleen Ann Keough, A.J., concur; Mary Eileen Kilbane, J., dissents (with separate opinion).

**KEY WORDS: Attorney fees; fees pursuant to agreement or contract; probate; trusts; contract interpretation; New York law.**

**Appellant appealed the probate court's award of attorney fees to appellee pursuant to the terms of a royalty agreement that was to be interpreted under New York state law. Pursuant to the plain meaning of the agreement, the probate court erred in awarding all attorney fees except for \$27,417.50, which were incurred from appellee's efforts to enforce a judgment.**

**113229** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v COURTLAND SCALES

Affirmed.

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

**KEY WORDS: Murder; attempted murder; purposely; self-defense; jury instructions; inferior offenses.**

**Appellant's convictions for murder and attempted murder upheld where the evidence showed that he acted purposely when he shot into a crowd of people, killing one person, and severely injuring another. The jury properly rejected appellant's claim of self-defense because the evidence showed that the defendant created the situation, escalated the affray, and acted with deadly force despite his perceived threat backing away with his empty hands raised. Trial court properly denied appellant's request for a jury instruction on voluntary manslaughter and aggravated assault as inferior offenses because the instructions were inconsistent with appellant's theory that he acted in self-defense; serious provocation was never alleged.**

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**113250** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v BEN MARTIN

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Murder; self-defense; manifest weight of the evidence.*

**Affirmed.** *The defendant's conviction for murder was not against the weight of the evidence where the state demonstrated beyond a reasonable doubt that the defendant did not act in self-defense when shooting the victim in the back from the roof of a house when it was relatively dark.*

**113294** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v SCOTT OSBORNE

Affirmed.

Kathleen Ann Keough, A.J., and Eileen A. Gallagher, J., concur; Lisa B. Forbes, J., concurs in judgment only (with separate opinion).

**KEY WORDS:** *Strangulation; R.C. 2903.18(B)(2); sufficiency of the evidence; manifest weight of the evidence.*

**Defendant's conviction for strangulation in violation of R.C. 2903.18(B)(2) was supported by sufficient evidence and was not against the manifest weight of the evidence where, even without considering the victim's written statement to the police about the incident, the victim's 911 call, her medical records, and her trial testimony demonstrated that the defendant knowingly created a substantial risk of serious physical harm to victim by strangling her.**

**113595** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v SIDNEY GREEN

Vacated and remanded.

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

**KEY WORDS:** *Conceded error; Crim.R. 11; burglary; strangulation; assault; plea.*

**Reversed and vacated.** *The trial court erred by inadvertently omitting an advisement on the privilege against self-incrimination at the change-of-plea colloquy.*

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**113616** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CORNELIUS D. MANN

Affirmed in part, vacated in part, and remanded.

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

**KEY WORDS:** *Conceded error; indefinite sentence; mandatory advisements.*

*Appellant's indefinite sentence imposed under the Reagan Tokes Law is contrary to law because the trial court failed to provide the mandatory advisements required by R.C. 2929.19(B)(2)(c) when imposing an indefinite sentence. The case is remanded to the trial court for resentencing for the sole purpose of providing appellant with the requisite statutory advisements.*