

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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**March 21, 2024**

**112388** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DOMINIQUE BLAIR

Affirmed.

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

**KEY WORDS:** *Felonious assault; improperly discharging a firearm; endangering children; criminal damaging; having a weapon while under disability; motion for mistrial; discovery violation; sanction; discretion; Crim.R. 16; fair trial; new trial; Crim.R. 33; due process; Crim.R. 29; acquittal; sufficiency; admission of evidence; Evid.R. 901; Evid.R. 602; harmless error; Crim.R. 52(A).*

*Affirmed appellant's convictions for felonious assault and related counts. The trial court did not abuse its discretion in denying appellant's motions for a mistrial and imposing a less severe sanction for a discovery violation under Crim.R. 16 where appellant was not prevented from receiving a fair trial, nor did the court err in denying appellant's request to set aside the verdict and for a new trial. The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal when sufficient evidence was presented to prove the essential elements of the crimes beyond a reasonable doubt. Appellant's convictions were not against the manifest weight of the evidence. The trial court did not abuse its discretion in the admission of video evidence under the silent witness theory pursuant to Evid.R. 901, in permitting the lead detective to testify to the contents of the video pursuant to Evid.R. 602, or in the admission of several exhibits; and any error in this regard was harmless at best.*

**112727** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE M.H.

Affirmed.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Murder; discretionary SYO specification; age 13; plea agreement; blended sentence; ineffective assistance of counsel; stipulation.*

*Juvenile did not demonstrate that he received ineffective assistance of counsel because the plea agreement that minimized his risk of more years in adult prison before parole did not contain any stipulation that the juvenile agreed that the trial court would impose the discretionary SYO. Juvenile did not demonstrate that the outcome of the case would be different, i.e., the trial court*

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would not have imposed a blended sentence, if counsel advocated stronger or provided more mitigation evidence because the court found that the nature of the offense and that the juvenile was already not abiding by the rules in juvenile detention, warranted the imposition of the discretionary SYO.

**112823** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: C.S.

Affirmed.

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

**KEY WORDS:** *Delinquency; adjudication; rape; sufficiency of the evidence; manifest weight of the evidence.*

*Appellant's delinquency adjudications for rape and disseminating matter harmful to juveniles are supported by sufficient evidence and are not against the manifest weight of the evidence.*

*The record contains evidence that the appellant forced the victim to engage in fellatio.*

*Further, the court did not clearly lose its way in adjudicating the appellant delinquent despite the fact that the victim did not report the rape for two years. Furthermore, the fact that no physical evidence was introduced does not make the adjudications against the manifest weight of the evidence because there is no requirement that physical evidence be presented.*

**112837** COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob  
HAWKEN SCHOOL v SANDRA MACHADO

Affirmed.

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

**KEY WORDS:** *Summary judgment; affidavit; deposition; personal knowledge; contract; breach; liquidated damages; notice pleading; strike; actual damages; penalty.*

*The trial court did not err in denying defendant's motion to strike the affidavit supporting plaintiff's motion for summary judgment, or in denying defendant's motion for a more definite statement. The trial court did not err in granting summary judgment in favor of the plaintiff because the evidentiary materials established the defendant's breach of the school-enrollments agreements and the validity of the liquidated damages provision contained therein.*

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**112875** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ALLEN BOYD, JR.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Rape; R.C. 2907.02(A)(1)(b); gross sexual imposition; R.C. 2907.05(A)(4); sexual contact; R.C. 2907.01(B); sexual arousal or gratification; Confrontation Clause; Rape Shield Law.*

*The state presented sufficient evidence that the defendant touched the victim's buttocks, vagina, and breasts to prove beyond a reasonable doubt the element of sexual arousal or gratification to convict the defendant of gross sexual imposition. The trial court did not err when it denied the defendant's request to cross-examine the victim regarding her alleged prior allegation that she was pregnant with defendant's child when there was nothing to indicate that she had made the prior statement. The trial court did not err when it granted the state's request to limit the defendant's cross-examination of the victim's father about a report that he made to child and family services ten years previously.*

**112889** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v RAYMERE FINLEY

Affirmed.

Eileen A. Gallagher, P.J., Anita Laster Mays, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Competency; competence to plead guilty; R.C. 2945.37; sua sponte; due process; indicia of incompetence; ineffective assistance; mental illness; schizophrenia; Reagan Tokes; indefinite sentence; separation of powers; trial by jury.*

*The trial court did not deny the defendant due process of law when it accepted his guilty plea without ordering, sua sponte, a competency hearing. The defendant reported a diagnosis of schizophrenia during the plea colloquy and had a history of substance abuse, homelessness and other instability in his life. But the record did not contain sufficient indicia of incompetence to hold that the defendant's right to a competency hearing was constitutionally guaranteed or that he was denied the effective assistance of counsel based on counsel's failure to raise the issue of competency.*

*The defendant answered the trial court's questions appropriately and without any signs of confusion or misunderstanding. Nothing in the record demonstrates that he was struggling to understand what was occurring at the plea hearing so as to put the trial court on notice that a competency evaluation was warranted. The record*

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**does not reflect anything out of the ordinary in his behavior and demeanor in the courtroom and his counsel at no point suggested that he was unable to assist in his defense.**

**The defendant's constitutional arguments related to indefinite sentencing under the Reagan Tokes Law were overruled pursuant to State v. Hacker, Ohio Supreme Court Slip Opinion No. 2023-Ohio-2535.**

**112913** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JOHN BRADLEY, JR.

Reversed and remanded.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS: Withdraw of guilty plea; jurisdiction; pending appeal.**

***Trial court lacked jurisdiction to consider defendant's motions to withdraw his guilty pleas because appeals were pending in both the appellate court and the Ohio Supreme Court. The trial court's consideration of the motions were inconsistent with the reviewing courts' jurisdiction to decide the issue on appeal.***

**112914** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v BENNIE WASHINGTON, SR.

Affirmed.

Frank Daniel Celebrezze, III, J., Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS: Admission of testimony; hearsay; Confrontation Clause; plain error; Evid.R. 801; prearrest silence; Fifth Amendment; substantive evidence of guilt; course of investigation; ineffective assistance of counsel; failure to object; prior bad acts; Evid.R. 404; propensity.**

***The trial court did not allow hearsay testimony or testimony that violated appellant's right to remain silent or his right to counsel. In addition, appellant did not receive ineffective assistance of counsel.***

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**112924** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CUYAHOGA COUNTY v OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, A.J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Ohio Patrolmen's Benevolent Association; collective bargaining agreement; arbitration award; overpayments; recoupment; equitable estoppel.*

*The county overpaid several grievants in 2021 by mistake, and when the county realized its mistake, it unilaterally deducted the grievants' pay over three pay periods in 2022. The issue on appeal is whether the arbitrator exceeded his authority when he determined that the county's unilateral recoupment of the 2021 overpayment by deducting the grievants' 2022 pay did not comport with the provisions of the CBA. Our review indicates the arbitrator did not exceed his powers because the arbitration award drew its essence from the collective bargaining agreement. Furthermore, the arbitrator's application of equitable estoppel is supported by a detailed analysis of the arbitration and court precedent. Because we find no statutory grounds exist to vacate the arbitrator's award pursuant to R.C. 2711.10, the trial court's judgment affirming the award is affirmed.*

**112968** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
M&T BANK, ET AL. v GEORGE STEWART, ET AL.

Affirmed.

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

**KEY WORDS:** *Summary judgment; Civ.R. 25; death; note; foreclosure; enforce; in rem.*

*Trial court properly granted summary judgment in favor of the lender and ordered foreclosure on the property. The borrower's death during the proceeding and subsequent dismissal from the action pursuant to Civ.R. 25 did not affect the lender's ability to foreclosure under the mortgage. The lender did not need to receive a personal judgment on the note before enforcing the mortgage because the action continued solely for an in rem judgment.*

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**112987** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CHARLES WOODS

Affirmed in part and vacated in part.

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

**KEY WORDS:** *Rape; gross sexual imposition; sufficiency; manifest weight; digital penetration; sexually violent predator specification.*

*Defendant's rape and gross sexual imposition convictions were supported by sufficient evidence and the weight of the evidence, except for one in which the evidence was not sufficient to support a rape conviction but was sufficient to support the lesser-included offense of gross sexual imposition.*

*Trial court's guilty finding on sexually violent predator specifications were not against the manifest weight of the evidence, but the trial court erroneously found the defendant guilty on one specification that required proof of a prior conviction of sexually violent offense but there was no evidence of a prior conviction.*

**113120** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
STATE OF OHIO v K.C.

Vacated.

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

**KEY WORDS:** *Sealing convictions, R.C. 2953.33(B)(1), intervention in lieu of conviction, R.C. 2951.041(E), notice.*

*Vacated. A trial court lacks the authority under R.C. 2953.33(B)(1) to seal a conviction without the filing of an application, notice to the state, and a hearing on the matter.*

**113211** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
DUCK CREEK ENERGY, INC. v TISH O'DELL, ET AL.

Affirmed.

Kathleen A. Keough, A.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Motion for relief from judgment; Civ.R. 60(B)(4) and (5); reasonable time; abuse of discretion.*

*Trial court did not abuse its discretion in denying appellants'*

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**motion for relief from judgment pursuant to Civ.R. 60(B)(4) and (5) as untimely filed where appellants did not meet the “reasonable time” requirement of Civ.R. 60(B) because they offered no explanation regarding why they waited nearly ten years after judgment to file the motion.**

**113377** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: J.J., ET AL.

Affirmed.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

***KEY WORDS: Termination of parental rights; manifest weight; clear and convincing evidence; R.C. 2151.414; R.C. 2151.413; best interest of the child; cannot or should not be placed with either parent; motion to modify temporary custody to permanent custody.***

***Judgment affirmed. Clear and convincing evidence exists upon which the juvenile court could have determined that (1) permanent custody was in the best interest of the children and (2) the children cannot or should not have been placed with the parents.***