

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 16, 2024

**112342** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TERRANCE CARNEGIE

Reversed and remanded.

Emanuella D. Groves, J., and Mary Eileen Kilbane, J., concur; Michelle J. Sheehan, P.J., dissents (with separate opinion).

**KEY WORDS:** *Evid.R. 803(4); Evid.R. 801(D)(2); Evid.R. 805; hearsay within hearsay; abuse of discretion; admissibility.*

*Trial court abused its discretion where it failed to independently determine whether appellant's statement to victim, which victim relayed to a medical professional, was admissible under an applicable hearsay rule. The statement was not admissible under Evid.R. 803(4) nor was it admissible as an admission under Evid.R. 801(D)(2). The statement was the sole evidence introduced to establish an essential element of the offense; accordingly, appellant was prejudiced by its admission such that the conviction must be reversed.*

*Nevertheless, in a sufficiency analysis, the reviewing court looks at all the submitted evidence regardless of its admissibility. Here there was sufficient evidence presented as to each element of the offense; accordingly, double jeopardy does not attach to bar retrial.*

**112544** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v CIERRA MACK

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, A.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Voluntary manslaughter; R.C. 2903.03(A); aggravated assault; R.C. 2903.12(A); inferior offense; serious provocation; cooling-off period; abuse of discretion; jury instructions; manifest weight; sufficiency; murder; R.C. 2903.01(A) and (B); R.C. 2903.11(A).*

*We affirm Mack's convictions for two counts of murder and two counts of felonious assault with the accompanying firearm specifications. Her convictions were supported by sufficient evidence and not against the manifest weight of the evidence. The trial court did not abuse its discretion when it did not instruct on the inferior offenses of voluntary manslaughter and aggravated assault because provocation by the victim was insufficient to incite the use of deadly force and Mack had sufficient time to cool off before acting.*

## CASE DECISION LIST

**112878** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BEDFORD CITY SCHOOLS BOARD OF EDUCATION v  
CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

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

**KEY WORDS:** *Administrative appeal; R.C. 5717.01; R.C. 5717.05; R.C. 2506.01; standing; motion to dismiss; Civ.R. 12(B)(6); valuation; property; school board.*

*The appellant school board had no standing to appeal a valuation decision made by a county board of revision to the common pleas court when the board did not own or lease the property at issue. We rejected the argument that R.C. 2506.01 conferred standing to appeal. That is a general statute, which is silent as to who has standing to file an administrative appeal. Later-enacted statutes specifically covering these kinds of valuation appeals - R.C. 5717.01 and 5717.05 - clearly prohibit a school board from appealing adverse decisions to a common pleas court when the board is not the property owner or a lessee. Recent amendments to these statutes, which eliminated a school board's ability to appeal valuation decisions even to the board of tax appeals, further support the conclusion that the legislature's intent was to eliminate a school board's ability to appeal these decisions under most circumstances. The trial court correctly dismissed the school board's appeal, and therefore its judgment is affirmed.*

**112935** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KATIA CHAPPELL

Affirmed.

Michael John Ryan, J., and Eileen A. Gallagher, P.J., concur; Mary J. Boyle, J., concurs in judgment only.

**KEY WORDS:** *Aggravated murder; R.C. 2903.01(A); prior calculation and design; Crim.R. 29; sufficiency of the evidence; self-defense.*

*There was sufficient evidence to convict appellant of aggravated murder when the evidence at trial showed that she killed the victim with prior calculation and design. The appellant and victim knew each other, had a strained relationship, the appellant had a firearm at her place of employment, and went to grab her purse with the gun in it before pursuing one of the victims outside. The appellant got into an altercation with the victims and then pursued her outside when she came upon the second victim. Appellant unloaded her gun into the second victim's car, killing her and injuring the first victim. Even though this occurred in a very short time period, there is no bright-line test for determining whether a*

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(Case 112935 continued)

**defendant's actions show a premeditated decision or studied consideration to kill - each case turns on its own facts, and the facts of this case support a conviction for aggravated murder.**

**The state met its burden of persuading the jury beyond a reasonable doubt that appellant was not acting in defense of herself or her cousin. The evidence showed that the victims were in the process of leaving when appellant pursued them and ordered them to fight. Although there were two shots fired from inside the car, the testifying expert could not conclude which shot was fired first and the jury believed the state's witnesses' testimonies that the victim did not fire first. The jury could consider evidence that the appellant had a firearm unlawfully on work premises when determining whether appellant acted in self-defense.**

**113070** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MATHEW SCHALL

Affirmed.

Eileen A. Gallagher, P.J., Eileen T. Gallagher, J., and Emanuella D. Groves, J., concur.

**KEY WORDS: *Res judicata; collateral estoppel; charges tried to the jury; charges tried to the bench; inconsistent verdicts.***

***Where charges of felonious assault, improperly discharging a firearm into a habitation and discharge of a firearm on or near prohibited premises were tried to the jury and having weapons while under disability charge was tried to the bench, jury's not guilty findings on felonious assault, improperly discharging a firearm into a habitation and discharge of a firearm on or near prohibited premises charges did not preclude defendant's conviction for having weapons while under disability based on res judicata or collateral estoppel.***

**113111** DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate  
M.C. v LARRY H. GARDNER, JR.

Affirmed.

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

**KEY WORDS: *Civ.R. 65.1(F)(3)(d)(i); untimely objections.***

***The trial court did not err in dismissing the appellant's motion because his objections to the magistrate's decision were untimely in accordance with Civ.R. 65.1(F)(3)(d)(i).***

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**113259** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
TMS ENTERPRISES LTD. v THE CITY OF CLEVELAND BOARD OF ZONING APPEALS, ET

Reversed and remanded.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Zoning appeal; use variance; nonconforming use; change-of-use application; vested right; spot-zoning.*

*Trial court erred in concluding that property owner did not have a vested right in a prior nonconforming use where evidence showed that the property owner applied for permits to use the property as a business before the zoning classification changed to residential.*

**113334** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
BD. OF EDUCATION OF THE CLEVE. MUNICIPAL SCHOOL DIST. v  
CUYAHOGA COUNTY BOARD OF REVISION

Affirmed.

Frank Daniel Celebrezze, III, J., Emanuella D. Groves, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Administrative appeal; board of revision; R.C. 5717.01; school board; appeal to common pleas court; R.C. 5717.05; R.C. Chapter 2506; standing.*

*The trial court did not err in dismissing the school board's administrative appeal. The school board did not have standing under R.C. 2506.01 to appeal a decision of a board of revision to the common pleas court.*

**113433** CLEVELAND MUNI. C Criminal Muni. & City  
CITY OF CLEVELAND v TOMIKA JONES-MCFARLANE

Reversed and vacated.

Eileen A. Gallagher, P.J., and Anita Laster Mays, J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

**KEY WORDS:** *Conceded error; domestic violence; sufficiency of the evidence.*

*The city conceded that defendant's conviction for domestic violence was not supported by sufficient evidence. Judgment reversed; conviction vacated.*

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**113443** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: R.M.

Affirmed.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Frank Daniel Celebrezze, III, J., concur.

**KEY WORDS:** *Permanent custody; continuance; best interests of the child; hearsay; GAL; oath; ineffective assistance of counsel.*

*Trial court did not abuse its discretion in denying Father's motion for continuance where Father was properly served through counsel and Father failed to have contact with counsel for seven months before trial.*

*The reasons for the trial court's grant of permanent custody were supported by competent, credible evidence.*

*Out-of-court statements were properly admitted as nonhearsay where they were not offered for the truth of the matter asserted but to explain why the child was placed with a foster family instead of relatives.*

*Acceptance of GAL's unsworn recommendation was not an abuse of discretion where statute does not require the GAL's recommendation to be under oath and the parties chose not to cross-examine the GAL.*

*Father's right to the effective assistance of counsel was not violated since there was no evidence of deficient performance and Father could not establish prejudice.*

**113444** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: O.G.

Affirmed.

Lisa B. Forbes, P.J., Michael John Ryan, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Termination of parental rights; permanent custody; best interest of the child.*

*Juvenile court did not err when terminating the mother's parental rights and granting custody of the child to the agency. Mother has chronic mental-health issues, including schizoaffective disorder, and developmental delays. Mother did not make enough progress on her case-plan objectives to warrant reunification with her child. Mother was receiving some services at an organization that was not an agency referral, and the court found that the two witnesses that testified from this organization had credibility issues. The guardian ad litem and the agency case worker both recommended that*

## CASE DECISION LIST

(Case 113444 continued)

### **Mother's parental rights be terminated.**

<b>113476</b>	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
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IN RE: J.C.

Dismissed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Mary Eileen Kilbane, J., concur.

**KEY WORDS:** *Delinquency; mandatory transfer; bindover; juvenile; final appealable order; jurisdiction.*

***State's appeal from a juvenile court's order on a motion for mandatory transfer (bindover) dismissed, because the order was not a final, appealable order. The order failed to indicate whether the court found probable cause to believe that the juvenile committed several of the acts charged and failed to indicate whether the court granted or denied mandatory transfer. Juvenile court directed to enter a final order as soon as possible.***