

## CASE DECISION LIST

October 17, 2024

**113289** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JIMMY WILBORN

Affirmed.

Kathleen Ann Keough, A.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Murder; drive-by shooting; planned; sufficiency of the evidence; manifest weight; involuntary manslaughter; having weapons while under disability; use of firearm by a violent career criminal; complicity; aiding; abetting; accomplice; inference stacking.*

*The State's use of inference stacking to prove that the defendant possessed or used a firearm was improper. Defendant's convictions upheld under a complicity theory because the evidence proved that the defendant aided and abetted in the murder and subsequent drive-by shooting at a residence. Defendant was not merely present but rather intended to participate in the armed robbery that pivoted to murder and a drive-by shooting once they believed they were being set up by the murder victim.*

**113495** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v LASHOND MALONE, JR.

Affirmed.

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

**KEY WORDS:** *Attempted murder; felonious assault; self-defense; sufficiency of the evidence; manifest weight of the evidence; admissibility of evidence; body-camera video; App.R. 16(A)(7); jury instruction on flight; consecutive sentences for firearm specifications.*

*Defendant's convictions for attempted murder and felonious assault are affirmed. The relevant issue in this case, which went to a jury trial, was whether the defendant acted in self-defense when he shot the victim five times. After reviewing the record, we determine that defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. This is not the exceptional case where the jury lost its way in convicting defendant of attempted murder and felonious assault. Defendant failed to show reversible error in the admission of evidence, jury instruction and consecutive sentences for firearm specifications.*

## CASE DECISION LIST

**113632** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
THOMAS P. SCHLEICH v PENN CENTRAL CORPORATION, ET AL.

Affirmed.

Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur; Mary J. Boyle, J., concurs in judgment only.

**KEY WORDS:** *Toxic tort, Federal Employers' Liability Act, necessity of expert testimony, reliability of expert testimony, summary judgment.*

*In a Federal Employers' Liability Act lawsuit, plaintiff alleged that while working for defendants, he was exposed to diesel exhaust fumes that was a cause of plaintiff's developing a type of leukemia. In order to support his claim, plaintiff was required to produce expert medical testimony on both general and specific causation. Plaintiff produced medical expert on the issue of causation who opined that benzene is contained in diesel exhaust and because benzene is a known cause of cancers to include leukemia, the exposure to diesel exhaust was a cause of plaintiff's condition.*

*The trial court granted defendants' motions to exclude plaintiff's expert's testimony on the grounds that it was unreliable. The trial court determined that the expert's testimony as to general causation was unreliable because the expert's method for finding and analyzing the scientific literature was unreliable and the expert did not support his opinion with scientific literature or explain the contradictory scientific literature that diesel exposure did not support an effect as to cancers such as leukemia. The trial court's grant of the motion to exclude the expert testimony was not an abuse of discretion. After the expert testimony was excluded, plaintiff did not have evidence of general causation and summary judgment was properly granted in favor of defendants.*

**113637** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
WELLS FARGO BANK, NATIONAL ASSOCIATION v GRACE M. DOBERDRUK, ET AL.

Dismissed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

**KEY WORDS:** *Foreclosure; supersedeas bond; motion for stay; mootness doctrine; R.C. 2329.45.*

*The foreclosure appeal was dismissed as moot. The appellant failed to obtain a stay because she did not post the required bond set by the trial court. Therefore, the property was sold, the sale was confirmed, and the proceeds were distributed. The appellant's argument that the appeal was not moot because R.C. 2329.45 provides a remedy when the property has been sold is without merit because R.C. 2329.45 applies only to appeals that were taken from the order confirming the sale, not from a decree of foreclosure and when an appellant successfully obtains a stay.*

## CASE DECISION LIST

**113878** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v RICHARD LENARD

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Motion to vacate forfeiture order; subject-matter jurisdiction; forfeiture as part of guilty plea; res judicata.*

*In December 2005, the defendant pled guilty to various offenses and, as part of the plea, agreed to forfeit several items. The defendant did not file a direct appeal. The defendant was sentenced to a lengthy prison term in various other cases in Ohio. The defendant filed multiple appeals, writs, and motions in the trial court. Related to this appeal, in March 2024, the defendant filed a motion to vacate the forfeiture order from 2005. Because the defendant agreed to forfeiture as part of his plea, the prosecutor's failure to file a petition for forfeiture did not divest the trial court of jurisdiction. Furthermore, the defendant's arguments challenging forfeiture are barred by the doctrine of res judicata.*

**113939** JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate  
IN RE: R.H.

Affirmed.

Eileen A. Gallagher, P.J., Mary J. Boyle, J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Permanent custody; continuance; Juv.R. 23; Juv.Loc.R. 35; reasonable efforts; R.C. 2151.419(A).*

*Juvenile court did not abuse its discretion in denying mother's oral motion for continuance at the permanent custody hearing, where mother requested a continuance to allow the agency to evaluate a family friend as a possible placement for the child. Mother did not comply with Juv.Loc.R. 35 and did not show that a continuance was "imperative to secure fair treatment for the parties" as required under Juv.R. 23. No one filed a motion for legal custody and no one appeared at the permanent custody hearing to testify that they were willing and able to be a caregiver or legal custodian for the child.*

*Mother did not show that the juvenile court failed to comply with its obligations under R.C. 2151.419(A). Where the juvenile court made reasonable-efforts findings before placing child in the permanent custody of the agency, it was not required to do so again in its judgment entry granting the agency's motion for permanent custody. Although it was not required to make such findings on the agency's motion for permanent custody, the juvenile court's reasonable-efforts findings were supported by clear and convincing evidence and were not against the manifest weight of the evidence. The record reflected that the agency developed a reasonable case*

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**plan and worked with mother for more one-and-one-half years, offering numerous referrals and services to mother, in an attempt to reunite her with her daughter. Mother, however, consistently failed to follow through with agency referrals, missing appointments, failing to comply with program requirements and ignoring recommendations for services.**