

**September 19, 2024****112934** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TYERRA POUGE

Affirmed.

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

**KEY WORDS:** *Felonious assault; R.C. 2903.11; firearm specification; R.C. 2941.141(A); severance; peremptory challenge; Batson; body camera; probative value; inflammatory; bolstering; self-defense; Crim.R. 29; sufficiency; manifest weight; ineffective assistance of counsel; medical records; foundation; authentication; Confrontation Clause; Sixth Amendment; relevancy; prejudice; character evidence; prosecutorial misconduct; opening statement; sentencing factors; R.C. 2929.11; R.C. 2929.12; Reagan Tokes Law; indefinite sentence; plain error; calculation of maximum term; R.C. 2929.144; cumulative error.*

*There was no Batson error in allowing the State to use a peremptory challenge to remove a Black female potential juror when the juror was not the only Black or female member of the venire and where the record supported the State's nondiscriminatory reasons for removing her.*

*There was no plain error in allowing the State to describe its theory of the case in the way complained of in its opening statement.*

*Any error in the admission of a body-camera recording of a victim interview was harmless beyond a reasonable doubt where it was merely cumulative of other evidence in the record.*

*There was no ineffective assistance of counsel where a motion to sever and objections to certain evidence would likely have been futile and where there was not a reasonable probability of a different outcome had the evidence been excluded.*

*The defendant's conviction for felonious assault was supported by sufficient evidence and was not against the manifest weight of the evidence, even considering her self-defense argument.*

*There were no cumulative errors in the trial requiring a new trial.*

*The trial court adequately considered the statutory sentencing factors.*

*The defendant's constitutional challenges to the Reagan Tokes Law and the resulting indefinite sentence were overruled pursuant to State v. Hacker, 2023-Ohio-2535.*

## CASE DECISION LIST

**113105** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ALBERT FONTANEZ

Affirmed.

Decision En Banc:

Eileen T. Gallagher, J.; Kathleen Ann Keough, A.J.; Mary J. Boyle; Frank Daniel Celebrezze, III; Lisa B. Forbes; Eileen A. Gallagher; and Michelle J. Sheehan, JJ.; concur;

Michael John Ryan, J., dissents (with separate opinion);

Sean C. Gallagher, Emanuella D. Groves, and Anita Laster-Mays, JJ.; concur with Judge Michael John Ryan's separate dissenting opinion.

Decision of the Merit Panel:

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

**KEY WORDS:** *Guilty plea; motion to withdraw; change of heart.*

**Denial of presentence motion to withdraw guilty plea affirmed where trial court failed to expressly state that a guilty plea constitutes a complete admission of guilt where the fact of the admission was obvious and the defendant failed to demonstrate prejudice.**

**Denial of presentence motion to withdraw guilty plea was not an abuse of discretion where trial court considered all factors necessary for evaluating a plea-withdrawal request under Crim.R. 32.1.**

**113207** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JAMES SAUNDERS

Affirmed in part, vacated in part, and remanded.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *Illegal voting; R.C. 3599.12; voting more than once at the same election; sufficiency of the evidence; Crim.R. 29; jurisdiction to prosecute in Ohio; R.C. 2901.11(A)(1); strict-liability offenses; manifest weight of the evidence; felony sentencing; fourth-degree felony; mandatory community-control sanctions; exception to mandatory community-control sanctions; discretion to impose prison term under certain circumstances; R.C. 2929.13(B)(1)(b).*

**Defendant's convictions for illegal voting are affirmed. Defendant violated R.C. 3599.12(A)(2) by voting twice in the same election when he voted once in Ohio and then again in Florida in the 2020 and 2022 general election held in November of each noted year. Defendant's prison sentence is vacated. The trial court did not have discretion to sentence defendant to prison for his fourth-degree**

## CASE DECISION LIST

(Case 113207 continued)

**felony convictions because he did not fall under any of the three exceptions found in R.C. 2929.13(B)(1)(b).**

**113210** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TAI'YUN HOLLOWELL

Affirmed in part, vacated in part and remanded.

Emaneulla D. Groves, J., Lisa B. Forbes, P.J., and Anita Laster Mays, J., concur.

**KEY WORDS:** *Guilty plea; knowingly, intelligently, and voluntarily; Crim.R. 11(C)(2)(a); State v. Dangler, 2020-Ohio-2765; Regan Tokes Law; R.C. 2929.144(B)(2); R.C. 2929.19(B)(2)(c).*

**Judgment affirmed in part, vacated in part, and remanded. The trial court complied with Crim.R. 11 and appellant's plea was knowingly, voluntarily, and intelligently entered. However, because the trial court imposed a sentence contrary to law, the case is remanded for resentencing.**

**113308** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v TA'VON BERKLEY

Affirmed.

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

**KEY WORDS:** *Guilty plea; amended indictment; Crim.R. 7; waiver of indictment pursuant to Crim.R. 7; plain error; invited-error doctrine.*

**The defendant pled guilty to an amended indictment without presenting the amended indictment to a grand jury. There was no error because he was represented by counsel, he bargained for the amendment, and he was not prejudiced because he gained a benefit by pleading to lesser counts than originally indicted.**

**113318** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ROBERT WINSTON

Affirmed.

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

**KEY WORDS:** *Rape; gross sexual imposition; kidnapping; importuning; manifest weight of the evidence; prosecutorial misconduct; vouching for witnesses; ineffective assistance of*

## CASE DECISION LIST

(Case 113318 continued)

**counsel. Defendant's convictions for various sex offenses are affirmed.**

**The convictions are not against the manifest weight of the evidence, despite inconsistencies between the child-victim's trial testimony and the statements she made to the police during the investigation. Inconsistencies in the statements of children regarding sexual conduct do not render judgments against the weight of the evidence. Furthermore, the convictions can rest solely on the victim's testimony, if believed. Any statements amounting to improper vouching by the prosecutor during closing arguments were isolated and not prejudicial.**

**113373** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JUSTIN LOPEZ

Affirmed.

Kathleen Ann Keough, A.J., Eileen T. Gallagher, J., and Anita Laster Mays, J., concur.

**KEY WORDS: Guilty plea; community control; misled; mandatory prison; nature of the offense; consecutive sentences; findings; operation of law.**

**Guilty plea upheld where record demonstrates that the defendant entered a knowing, intelligent, and voluntary plea. The trial court did not mislead the defendant to believe that he would only receive community control sanctions because the trial court unambiguously advised him that he was subject to a mandatory prison term for the firearm specification. The record unequivocally demonstrated that defendant understood the nature of his offenses. Consecutive-sentence findings are not required when the consecutive nature of the offenses arise by operation of law.**

**113411** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v MYLES KING, JR.

Affirmed.

Frank Daniel Celebrezze, III, J., and Eileen T. Gallagher, J., concur; Lisa B. Forbes, P.J., concurs in judgment only.

**KEY WORDS: Constitutional challenge; facial challenge; firearms; dismissal of indictment; R.C. 2923.13(A)(2); having weapons while under disability.**

**Judgment affirmed. Defendant King's facial constitutional challenges to R.C. 2923.13(A)(2) under the United States and Ohio Constitutions are overruled. A juvenile adjudication that would be the equivalent of a felonious offense of violence may serve as the**

## CASE DECISION LIST

(Case 113411 continued)

**predicate disability required to charge a defendant with having weapons while under disability based on precedent in the United States Supreme Court. In the wake of recent United States Supreme Court caselaw, there is no discernable difference between the protections afforded by the U.S. and Ohio Constitutions for purposes of a constitutional challenge to R.C. 2923.13(A)(2).**

**113718** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
MAURIE NUNN v DONNELL MITCHELL, ET AL.

Affirmed.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Michael John Ryan, J., concur.

**KEY WORDS:** *App.R. 12; Civ.R. 12(F); motion to strike; Civ.R. 60(B) motion.*

***An appellate court is limited to the record in reviewing an appellant's assignments of error. Where the trial court struck various motions from the record, substantive arguments pertaining to the merits of these motions are without merit. The trial court did not abuse its discretion in striking either of appellant's motions from the record.***

**114004** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v LARUE M. PERRYMAN, III

Reversed and remanded.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Credit for time served; juvenile detention; R.C. 2967.191(A); R.C. 2929.19(B)(2)(g)(iii).*

***Case remanded. Under R.C. 2967.191(A), a defendant is entitled to credit for time served in juvenile detention. R.C. 2929.19(B)(2)(g)(iii) allows a defendant to file a motion for correction in jail-time credit any time after sentencing. Further, R.C. 2929.19(B)(2)(g)(iii) grants sentencing courts continuing jurisdiction to correct an error in jail-time credit.***

***The case is remanded for further proceedings to determine what time, if any, the defendant is entitled to receive as credit for time spent in juvenile detention prior to the case being transferred to adult court.***