

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

**April 3, 2025**

<b>113864</b>	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v JOSEPH WIMBLEY			

Affirmed in part; dismissed in part.

Deena R. Calabrese, J., Kathleen Ann Keough, P.J., and William A. Klatt, J.,\* concur.

(\*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

**KEY WORDS:** *Sentencing entry; sentencing hearing; misdemeanor community-control sanctions; moot; presence during the imposition of sentence; Crim.R. 43(A)(1).*

*Judgment affirmed in part and dismissed in part. Appellant's arguments that the trial court's community-control sanctions are improperly excessive as they relate to other properties are dismissed as moot because appellant did not own any other properties and the sentencing orders only relate to the subject property. Although not verbatim, the sentencing entry did not differ from the sentencing imposed during the sentencing hearing.*

<b>114047</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DELVONTE PHILPOTTS			

Affirmed.

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

**KEY WORDS:** *Having weapons while under disability; facially unconstitutional; Second Amendment to the United States Constitution; right to keep and bear arms; temporarily disarm a person who is under indictment for a violent felony.*

*The trial court's finding that a portion of R.C. 2923.13(A)(2), which governs having weapons while under disability, is unconstitutional on its face under the Second Amendment is affirmed. The offending provision of the statute prohibits people who are under indictment for violent felonies - rather than having been convicted of violent felonies - from possessing a firearm. Under the United States Supreme Court's recent jurisprudence concerning the right to keep and bear arms pursuant to the Second Amendment, this provision of R.C. 2923.13(A)(2) does not pass constitutional muster because it has no "historical analogue" in this Nation's tradition of firearm regulation.*

## CASE DECISION LIST

<b>114050</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MICHAEL J. CREER, JR.			

Affirmed.

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

**KEY WORDS:** *Felony murder; independent intervening cause; sufficiency; manifest weight; effective assistance of counsel; grand jury; essential facts.*

*Judgment affirmed. There was no error in allowing a witness to testify who had not been present for the grand jury proceedings. The defendant's convictions were not based on insufficient evidence or against the manifest weight of the evidence. The trial court did not err in deciding not to instruct the jury on independent intervening cause. The defendant did not receive ineffective assistance of counsel.*

<b>114051</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ANDRE Q. PETTAWAY			

Affirmed in part, vacated in part, and remanded.

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

**KEY WORDS:** *Felony murder; improper discharge of a firearm into a habitation; sufficiency of the evidence; insufficient evidence; manifest weight of the evidence; drive-by shooting; habitation, video surveillance; forensic analysis; direct evidence; circumstantial evidence; aiding and abetting; accomplice liability; affirm; vacate; remand; resentencing.*

*Defendant-appellant's jury trial convictions for felony murder and one count of improper discharge of a firearm into a habitation are affirmed on direct appeal. There was sufficient evidence presented that defendant-appellant aided and abetted the principal offender in the commission of the offenses and his convictions for felony murder and one count of improper discharge of a firearm into a habitation were not against the manifest weight of the evidence because there were no credibility issues or inconsistencies with regard to the State's witnesses' testimonies. The remaining four counts of improper discharge of a firearm into a habitation are vacated, however, due to the fact that only one habitation was at issue. Case remanded for resentencing.*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 3 of 6

<b>114064</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DREQUAN WOOD			

Affirmed in part, vacated in part and remanded.

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

**KEY WORDS:** *Felony murder; improperly discharging a firearm at or into a habitation; jury instructions; independent intervening cause of death; sufficiency of the evidence; manifest weight of the evidence.*

*Defendant's conviction for felony murder in this drive-by-shooting case is affirmed. Defendant and two accomplices fired over 30 shots into a house from their car. One person in the house died of a gunshot wound. Defendant was not entitled to a jury instruction about independent intervening cause of death, even though the evidence showed that return gunfire from inside the house may have been the immediate cause of death of the victim. Under felony murder, the direct cause of death is irrelevant if the proximate cause of death is the defendant's commission of the underlying felony, which in this case was improperly discharging a firearm into a habitation. It is foreseeable, natural and logical that firing a gun into an occupied structure might kill someone.*

*Four of the five convictions for improperly discharging a firearm at or into a habitation are reversed based on insufficient evidence. The State charged the defendant with one count of this offense for each individual who was inside the house when the shooting took place. A jury convicted the defendant of five counts of this offense. However, this court has held that the offense is a crime against the habitation, not a crime against a person. One house was shot into in this case, and this supports one count of the offense.*

<b>114089</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
TERRY KING-BEY v GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY			

Affirmed.

Kathleen Ann Keough, P.J., Deena R. Calabrese, J., and William A. Klatt, J.,\* concur.

(\*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

**KEY WORDS:** *Personal injury; jury trial; medical expert; damages award; noneconomic damages; R.C. 2315.19.*

*Judgment affirmed. The trial court did not err in upholding the jury's \$75,000 noneconomic damages verdict based on the guidance in R.C. 2315.19. The trial court also did not err in the various rulings raised as error both before, during, and after trial.*

## CASE DECISION LIST

<b>114104</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v FIDEL NIYONZIMA			

Affirmed.

Deena R. Calabrese, J., Lisa B. Forbes, P.J., and Mary J. Boyle, J., concur.

**KEY WORDS:** *Interpreter; interpreter oath; Crim.R. 11(C)(2); Evid.R. 604; Evid.R. 702; R.C. 2311.14(B); sex offender registration.*

**Affirmed.** *Appellant appeals his judgment of conviction after pleading guilty to attempted rape and burglary, arguing that his plea was not knowingly, intelligently and voluntarily made. The court finds no error when the oath to the interpreter is not on the record verbatim, the interpreter asked the prosecutor to repeat himself twice, and defendant expressed he did not know what the word “probation” meant, or if he had been advised by an immigration attorney. The trial court’s statement during the plea colloquy that there was “the chance” defendant would have to register as a sex offender was not error.*

<b>114114</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ISAIAH DAVIS			

Affirmed and remanded.

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

**KEY WORDS:** *Guilty plea; maximum sentence; Crim.R. 11.*

**Trial court was not required to advise appellant of the maximum penalty he faced on his community-control violation when he pleaded guilty to a new case. The trial court complied with Crim.R. 11 when it advised appellant of the maximum penalties of his current charges.**

<b>114212</b>	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
SPENCER L. MURFEY, III, ET AL. v MARIA G. MUTH, ET AL.			

Affirmed.

Sean C. Gallagher, J., Michael John Ryan, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *Compel arbitration; waiver.*

**Affirmed.** *The trial court did not abuse its discretion in compelling arbitration based on tangentially related claims being litigated in an out-of-state proceeding, which has since concluded, or based on*

## CASE DECISION LIST

(Case 114212 continued)

**the defendants' conduct in the underlying case that was limited to responding to the complaint by filing a motion to compel arbitration after a series of requests for continuances to respond.**

<b>114268</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TIMMEKA EGGLETON			

Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Consecutive sentences; agreed term; contrary to law; authorized by law; R.C. 2953.08(G)(2); R.C. 2953.08(D)(1).*

*R.C. 2929.14(C)(4) allows consecutives whenever a person is convicted of multiple felonies without regard to the level of offense. Accordingly, the trial court did not err when it imposed consecutive sentences for a charge of murder with a life term and a charge of felonious assault with an S.B. 201 sentence as the sentence was authorized by law. Finally, the sentence on felonious assault was within the statutory range and therefore not clearly and convincingly contrary to law.*

<b>114280</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v HARRY HOLLIMAN, JR.			

Affirmed.

Michael John Ryan, J., Emanuella D. Groves, P.J., and Kathleen Ann Keough, J., concur.

**KEY WORDS:** *One- and three-year firearm specifications attendant to same count; R.C. 2929.14(B)(1)(g); sentencing on firearm specifications is not analogous to sentencing for allied offenses; trial court decides under which specification defendant will be sentenced.*

*Judgment affirmed. The trial court did not err in sentencing the defendant on the one-year firearm specification after he was found guilty of both the one- and a three-year firearm specification for the same count. The exception under R.C. 2929.14(B)(1)(g) is inapplicable to this case, and the other relevant statutes - R.C. 2941.141(B) and 2941.145(B) - preclude sentencing on both a one- and three-year firearm specification attendant to the same count. The statutes do not elevate the three-year specification over the one-year specification. Firearm specifications are sentencing enhancements and are not analogous to allied offenses, where the State chooses which count to proceed to sentencing on.*

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 6 of 6

<b>114361</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v PLEAS STEWART			
<b>114362</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v PLEAS STEWART			

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Deena R. Calabrese, J., concur.

**KEY WORDS:** *Fourth Amendment; warrantless entry; consent; search warrant; fruit of the poisonous tree doctrine; exclusionary rule.*

**Judgment affirmed.** *The denial of the suppression motion was not in error. Appellant consented to officers' initial entry into his home to retrieve clothing for appellant to wear. The evidence was in plain view, and that observation can be used as the basis for a subsequent search warrant.*