

## CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 13, 2022

**110749** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v JAIDEE MIREE

Affirmed in part; vacated in part; and remanded.

Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *R.C. 2929.02(B); juvenile bindovers; manifest weight of the evidence; sufficiency of the evidence; self-defense; duty to retreat; R.C. 2901.09; retroactivity; lesser included offenses; admissibility of evidence; preservation of evidence; witness credibility; mistrial; ineffective assistance of counsel.*

*The trial court erroneously sentenced appellant under R.C. 2929.02(B). However, the rest of appellant's assignments of error are without merit. Appellant's bindover from juvenile court was supported by sufficient, credible evidence. Appellant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not err in instructing the jury on self-defense, duty to retreat, and lesser included offenses. The trial court did not err in admitting evidence that appellant claimed was prejudicial or denying appellant's motions for a mistrial, particularly based on destruction of the subject vehicle. Appellant's trial counsel was not ineffective. Finally, a life sentence did not violate appellant's constitutional rights.*

**110784** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DESMOND DUNCAN, JR.

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Cornelius J. O'Sullivan, Jr., J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

**KEY WORDS:** *Self-defense; duty to retreat; R.C. 2901.09; retroactivity; lesser included offenses; Evid.R. 404(B); admission of juvenile adjudications; manifest weight of the evidence; sufficiency of the evidence; witness credibility.*

*The trial court did not err in its instructions to the jury on self-defense, duty to retreat, and lesser included offenses. Any error in admitting evidence tending to support that a robbery occurred when the jury acquitted appellant of all robbery-related charges was harmless. Appellant's juvenile adjudications were properly limited and admitted. Finally, appellant's convictions were not based on insufficient evidence or against the manifest weight of the evidence.*

## CASE DECISION LIST

**111042** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v KAYLYNN COUNTS

Reversed and remanded.

MichelleJ. Sheehan, P.J.; Cornelius J. O'Sullivan, Jr., J., concurs in judgment only (with separate opinion attached); Mary J. Boyle, J., dissents (with separate opinion attached).

**KEY WORDS:** *Nonparty discovery order; Marsy's Law; Ohio Constitution, Article I, Section 10a, Ohio Constitution, Article I, Section 14, victim's rights; accused's rights; Fourth Amendment, criminal defendant's constitutional rights; balancing test; abuse of discretion.*

*A trial court has the authority to issue discovery orders to nonparties in a criminal case. When confronted with a criminal defendant's discovery request to inspect a victim's home, the trial court must balance the rights of the victim versus the criminal defendant's rights. The trial court is to consider the victim's Ohio Constitutional right to refuse discovery under Marsy's Law, Ohio Constitution, Article I, Section 10a; the victims right to privacy and to be secure in their home pursuant to the Fourth Amendment; and Ohio Constitution, Article I, Section 14 against the defendant's request for the inspection, which at a minimum must be a legitimate request to inspect the home that demonstrates a necessity in order to preserve the defendant's rights. In this case, the trial court applied an incorrect standard of law by weighing the de minimis nature of the intrusion of the victims' home against a generalized assertion that the inspection was necessary to preserve defendant's rights. Judgment ordering the inspection of the victims' home is reversed.*

**111115** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v DEVON L. MALLORY

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Sufficient; manifest weight; evidence; enhancement; alternative means; unanimous; verdict; plain error; reasonable doubt; Reagan Tokes Law; constitutional; postrelease control; new trial; double jeopardy; ineffective assistance; prejudice; deficient performance.*

*Defendant's convictions were supported by sufficient evidence, however, the state failed to prove the furthermore clause attached to the domestic violence offense for the purposes of enhancing the conviction to a felony. The failure to ensure a unanimous verdict on the involuntary manslaughter offense was not plain error. The convictions are not against the manifest weight of the evidence.*

## CASE DECISION LIST

(Case 111115 continued)

**Defense counsel was not ineffective for broadly challenging the evidence during his Crim.R. 29 motion for acquittal. The trial court erred by failing to apply the amended version of R.C. 2967.28(B)(2) when imposing postrelease control. Under the prevailing jurisprudence, the Reagan Tokes Law is constitutional and does not violate the separation-of-powers doctrine, or the defendant's right to a jury trial or due process law.**

**111156** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
EAST CLEVELAND IAFF 500, ET AL. v CITY OF EAST CLEVELAND, ET AL.

Affirmed.

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

**KEY WORDS: Motion to enforce arbitration award; R.C. 2711.09; sanctions; contempt; temporary restraining order; preliminary injunction; law-of-the case doctrine; res judicata; laches.**

**The trial court did not err in granting the appellees' motion to confirm and enforce the arbitration award and setting a damages amount. The damages amount was consistent with the arbitration award mandate that the city of East Cleveland "make all affected [firefighters] whole in back pay/lost benefits who would have been entitled to overtime on the call-out list under the terms of the [CBA] at any/all dates post April 12, 2016." Appellees provided evidence calculating what the city of East Cleveland owed in backpay on any and all dates after April 12, 2016, that the city was in violation of the CBA.**

**Further, the trial court's award of sanctions to the appellees was separate and distinct from its later confirmation of the arbitration award. Appellants were sanctioned for violating the trial court's preliminary injunction ordering them to staff the fire department pursuant to the CBA. The confirmation of the arbitration award quantified damages and was the first time the court issued an entry related to the arbitration award. Accordingly, the law-of-the-case doctrine and res judicata are inapplicable. Laches is also inapplicable because appellants have not demonstrated that there was an unreasonable delay on behalf of the appellees. Judgment affirmed.**

**111206** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v EDWONTE BRYANT

**111522** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v EDWONTE BRYANT

## CASE DECISION LIST

Affirmed in part, reversed in part, and remanded.

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

**KEY WORDS:** *Sexual battery; gross sexual imposition; coercion; sexual conduct; sexual contact; sufficient; evidence; manifest weight; credibility; nunc pro tunc; Reagan Tokes; constitutional; contrary to law; void; voidable; nullity.*

*Defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The indefinite sentencing scheme enacted under the Reagan Tokes Law is not unconstitutional. The trial court complied with the requirements of the Reagan Tokes Law when imposing an indefinite sentence of the defendant's first-degree felony conviction. The trial court's attempt to correct a voidable sentencing error was improper and is a nullity.*

<b>111211</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JAMES LADSON			

Affirmed.

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

**KEY WORDS:** *Authentication; Evid.R. 901; abuse of discretion; murder; voluntary manslaughter; jury instruction; Crim.R. 29; sufficiency of the evidence; manifest weight of the evidence; due process; Evid.R. 602; Evid.R. 701.*

*The trial court did not abuse its discretion in admitting video and photo evidence that was properly authenticated. The trial court did not abuse its discretion in denying appellant's request for a jury instruction on voluntary manslaughter where the evidence did not support such an instruction. The convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not abuse its discretion in permitting a detective to testify about surveillance footage where the detective had personal knowledge of the matter.*

<b>111244</b>	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOSHUA EGGLETON			

Affirmed.

Eileen T. Gallagher, J., Sean C. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS:** *Felony; sentencing; Reagan Tokes; constitutional; due process; separation of powers; trial by jury.*

*The indefinite sentencing scheme enacted under the Reagan Tokes*

## CASE DECISION LIST

(Case 111244 continued)

**Law is not unconstitutional. The trial court complied with the requirements of the Reagan Tokes Law when imposing an indefinite sentence of the defendant's first-degree felony conviction.**

**111272** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
CASHELMARA CONDOMINIUM UNIT OWNERS ASSOCIATION v STEPHEN M. KISH, ET AL.

Affirmed.

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

**KEY WORDS: Injunction; continuing jurisdiction; burden to update address with court; pro se litigant; decline to review issues raised for the first time on appeal; Civ.R. 60(B)(3); proper service; and rebuttable presumption.**

**Where the trial court granted a preliminary and permanent injunction and the corresponding judgment entry stated the court retained jurisdiction, the trial court had continuing jurisdiction to enforce the injunction and related motions. Even after the court granted the injunction, the parties bore the burden to notify the court of a change in address. Issues raised for the first time on appeal are not properly before the appellate court and will not be reviewed. The trial court did not err when it found that the evidence did not show fraud or misconduct and, therefore, denied appellants' Civ.R. 60(B)(3) motion.**

**111319** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
PAMELA LOURY v WESTSIDE AUTOMOTIVE GROUP, ET AL.

Affirmed.

Eileen T. Gallagher, J., Sean C. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

**KEY WORDS: Consumer Sales Practices Act; statutory damages; attorney fees; actual damages; contract; absurd; contingent.**

**Trial court properly concluded that plaintiff was not entitled to damages under the Consumer Sales Practices Act when dealership repossessed a car where the parties' agreement was clearly contingent on the plaintiff obtaining financing to buy a car and plaintiff failed to obtain financing.**

## CASE DECISION LIST

**111327** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
SW ACQUISITION CO., INC. v AKZO NOBEL PAINTS LLC, ET AL.

Affirmed.

Eileen A. Gallagher, P.J., Michelle J. Sheehan, J., and Lisa B. Forbes, J., concur.

**KEY WORDS:** *Motion to disqualify counsel; necessary witness; Prof.Cond.R. 3.7(a); complaint for appointment of arbitrator.*

*Common pleas court did not abuse its discretion in denying appellant's motion to disqualify counsel from representing appellee in yet-to-be-filed arbitration proceeding. Where the sole issue before the common pleas court was the appointment of an arbitrator, it was not shown that the common pleas court was the appropriate entity to decide disqualification issue as it related to yet-to-be-filed arbitration proceeding.*

**111339** ROCKY RIVER MUNI. C Criminal Muni. & City  
CITY OF WESTLAKE v JACKIE L. ROBERTS

Reversed and remanded.

Sean C. Gallagher, A.J.; Eileen A. Gallagher, J., concurs in judgment only; and Eileen T. Gallagher, J., concurs in judgment only.

**KEY WORDS:** *Motion to suppress; Fourth Amendment; warrantless entry; home; burden; exigent circumstances; exigencies; misdemeanor; misdemeanant; suspect; operating a vehicle while intoxicated; intoxicated driver; flight; pursuit; totality of the circumstances; particular facts.*

*Reversed the trial court's decision denying a motion to suppress evidence and remanded the case to the trial court with instructions. The warrantless home entry by police in pursuit of a suspected misdemeanant violated the Fourth Amendment. The record showed that the police initiated a traffic stop after a motorist report of a possible intoxicated driver and the suspect pulled into a nearby driveway and fled into his home. Under the particular facts of the case, the city did not demonstrate an exigency that created a compelling law enforcement need for officers to make a warrantless home entry while in pursuit of a misdemeanant suspect.*

## CASE DECISION LIST

**111497** COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob  
PAUL F. KRUGER v FIRST CHOICE REALTY AUTOMOTIVE, LLC, ET AL.

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

**KEY WORDS:** *Motion for sanctions; R.C. 2323.51(B)(1); Civ.R. 11; jurisdiction; untimely; conceded error.*

*Trial court did not err in denying appellants' motion for sanctions under R.C. 2323.51(B)(1) because motion was untimely. Appellee conceded that trial court erred in determining that it did not have jurisdiction to consider appellants' request for sanctions under Civ.R. 11. Judgment reversed in part and remanded for consideration of appellants' request for sanctions against appellee's counsel under Civ.R. 11.*

**111689** COMMON PLEAS COURT A Criminal C.P.  
STATE OF OHIO v ROBERT ESTER, JR.

Vacated and remanded.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

**KEY WORDS:** *Conceded error; Crim.R. 11; guilty plea; penalties; mandatory postrelease control.*

*Trial court did not comply with Crim.R. 11 where it did not advise defendant regarding mandatory postrelease control and potential penalties for all offenses during plea colloquy. Sentences and convictions vacated; case remanded for further proceedings.*