



## Ohio case law summaries from February 1 – May 15

**In Case You Missed It** The following are summaries of cases decided by Ohio courts between February 1, 2021– May, 15, 2021. To read the decisions in their entirety, please visit [ebar.ohioabar.org](http://ebar.ohioabar.org) and enter the case name in the “keyword” search field.

### Administrative Law

**Appeal.** Sunderland v. Liberty Twp. Bd. of Zoning Appeals, 2021-Ohio-353 | 5th Appellate District | 2/5/21 In appellant-property owner's unsuccessful claim that earthen mounds on neighbor's property were structures that violated township zoning ordinance, trial court's dismissal of appeal on basis of mootness was not error since the zoning ordinance was amended during the appeal to explicitly state that the term "structure" did not include earthen mounds; reliance on amendment did not constitute a retroactive application of the amendment since it did not reach back and create new burdens, new duties, new obligations or new liabilities not existing at the time the amendment became effective and specifically did not infringe on appellant's right to appeal or on his vested property rights.

**Appeal.** Geyer v. Clinton Cty. Dept. of Job & Family Servs., 2021-Ohio-411 | 12th Appellate District | 2/16/21 In administrative appeal of county agency's decision upholding substantiated disposition of abuse by appellant, trial court did not err in granting agency's motion to dismiss for lack of subject matter jurisdiction since R.C. 119.12(B) provides for judicial review of decisions of state agencies only, and R.C. 2506.01 does not provide jurisdiction for the court to review agency's decision because the decision was not a final order that affected the legal rights of appellant.

**License revocation.** Parker v. Ohio Dept Job & Family Serv., 2021-Ohio-611 | 5th Appellate District | 3/4/21 In appeal of denial of plaintiff's application to the Ohio Department of Job & Family Services (ODJFS) for a home child care license after her previously-held license was revoked for substantiated neglect, the trial court did not err in affirming denial of her application since evidence supported the determination that children in plaintiff's care may be endangered, and doctrines of res judicata and law of the case do not apply because county department denied the

first prior application, but a change in administrative code gave the authority to state department in denial of second prior application, R.C. 119.12.

**Medical marijuana application.** State ex rel. Fire Rock, Ltd. v. Ohio Dept. of Commerce, 2021-Ohio-673 | Supreme Court of Ohio | 3/11/21 Level II medical-marijuana cultivator's petition for writ of mandamus is granted to compel state commerce department to approve or deny the application cultivator submitted to expand its cultivation area since Ohio Adm. Code 3796:2-1-09(C) does not prohibit a cultivator from initiating submission of an application, Ohio Adm. Code 3796:2-1-09(C) gives the department a reasonable time to review and approve or deny a request for expansion, the cultivator has a clear legal right to have the department act, and the cultivator does not have an adequate legal remedy.

**Appeal.** Johnson v. Danbury Twp., 2021-Ohio-755 | 6th Appellate District | 3/12/21 Dismissal by trial court of attempted appeal of zoning commission administrator's letter informing appellant that his neighbors did not violate any law by keeping fowl in their yards is affirmed where there was no quasi-judicial proceeding from which to appeal since administrator's letter did not constitute a quasi-judicial proceeding, R.C. 2506.01.

**Appeal.** Vukovic-Burkhardt v. Dayton Bd. of Edn., 2021-Ohio-739 | 2nd Appellate District | 3/12/21 In teacher's administrative appeal of school board's decision to discharge her for inappropriate behavior, trial court did not err in granting judgment on the pleadings in favor of board for lack of jurisdiction to consider appeal where appeal was untimely under R.C. 3319.16 because it was filed more than 30 days after teacher's attorney received notice of board's final decision, and service upon attorney was equivalent to service upon teacher.

**License revocation.** Farm Supply Ctr., Inc. v. Pelanda, 2021-Ohio-741 | 5th Appellate District | 3/12/21 In appellant-farm supply center's administrative appeal of department's feed registration license revocation for violations of livestock feed laws, trial court's adoption of hearing officer's recommendation to revoke appellant's license is affirmed where department exercised its authority under R.C. 119.09 to postpone hearing, appellant was served notice of new hearing date and did not show unavoidable reason for failure to appear, and department presented substantial evidence that appellant violated R.C. 923.51(A).

**License revocation.** Stone v. Ohio Real Estate Comm., 2021-Ohio-809 | 10th Appellate District | 3/16/21 In appellant-real estate salesperson's appeal of commission's revocation of his real estate license triggered by a complaint about misconduct relating to property management, trial court did not err in affirming adjudication order where appellant failed to timely comply with requests from licensing division, R.C. 4735.18(A)(6), he failed to notify superintendent of change in residence address within reasonable time, R.C. 4735.14(D), and he failed to correct an inaccurate charge to the property owner, R.C. 4735.18(A)(9).

**Appeal.** Dart v. Bellbrook Property Rev. Comm., 2021-Ohio-864 | 2nd Appellate District | 3/19/21 In appellant-property owner's administrative appeal of property review commission's decision to refer his property for prosecution for maintenance and zoning code violations, trial court did not err in dismissing appeal since appellant did not exhaust administrative remedies where he received notice of violations but failed to appeal notice and thus did not avail himself of a hearing to review the merits of alleged violations, and neither exception to the doctrine of exhaustion applies because an administrative remedy could have provided plaintiff with relief sought, and remedy was not onerous or unusually expensive, R.C. Ch. 2506.

**Daycare agreement.** State ex rel. Small Early World Learning Ctr. v. Ohio Dept. of Job & Family Servs., 2021-Ohio-954 | 10th Appellate District | 3/25/21 Relator-daycare provider's petition for writ of mandamus to compel respondent-state department to vacate termination of its agreement with relator is denied since relator violated former R.C. 5104.32(D) (2) when it used electronic childcare cards issued to parents, the terms of agreement and applicable provision of state law granted respondent the right to terminate without conducting integrity review, and even if a review had been required, the investigation conducted by respondent constituted an integrity review; also, the court cannot compel respondent-state department to promulgate rules to give daycare providers the right to appeal agreement termination decisions to the common pleas court.

**Misconduct.** Stahl v. Allen-Clay Joint Fire Dist., 2021-Ohio-986 | 6th Appellate District | 3/26/21 In battalion chief's administrative appeal of board's decision finding him guilty of misconduct in office for failure to administratively address the issue of emergency technician's performing a medical procedure in violation of his certification authority, trial court did not err in affirming board's decision since chief was responsible for supervising personnel at scene, as highest ranking officer on scene he was required to report knowledge of an R.C. Ch. 4765 violation, and substantial evidence shows he knew or should have known of improper conduct.

**Appeal.** Rice v. Johnstown Planning & Zoning Comm., 2021-Ohio-1392 | 5th Appellate District | 4/19/21 Dismissal of farm owners' appeal from zoning commission's denial of their application for preliminary planned unit development (PUD) on their property is affirmed since commission's denial of application that would result in rezoning property under the PUD was a legislative action, R.C. Ch. 2506 applies to administrative or quasi-judicial decisions rather than legislative decisions, and therefore the court lacked jurisdiction to entertain the appeal.

**Appeal.** Ohio Academy of Nursing Homes, Inc. v. Ohio Dept. of Job & Family Servs., 2021-Ohio-1414 | 10th Appellate District | 4/22/21 In relator-nursing home's action seeking to compel department of Medicaid to calculate reimbursement in compliance with R.C. Ch. 5111, trial court did not err in

granting summary judgment in favor of department since relator failed to pursue an available adequate administrative remedy by way of appeal to department's director after being notified that their request for rate adjustments was denied, and relator's speculative belief that director would have agreed with department's decision did not make the appeal process futile.

**Appeal.** Wu v. Ohio Civ. Rights Comm., 2021-Ohio-1541 | 11th Appellate District | 5/3/21 In university employee's action seeking determination from civil rights commission that university engaged in unlawful discriminatory practice, trial court did not err in affirming commission's letter of determination, issued on commission's reconsideration, dismissing employee's claims where commission was not required to hold hearing prior to issuing its order, commission followed adjudicatory procedures under R.C. Ch. 4112 and did not violate employee's due process rights, and commission sufficiently explained its decision not to pursue legal action against university.

**Appraiser's license.** Collateral Mgt., L.L.C. v. Ohio Dept. of Commerce, 2021-Ohio-1641 | 10th Appellate District | 5/11/21 Denial of appellant's application to be licensed as an appraisal management company on reasoning that its owner-controlling person had surrendered her residential real estate appraiser license was error to the extent that the real estate appraiser board's denial was based on owner's surrender of license, without consideration of whether the surrender was for a substantive reason, and the case is remanded to the common pleas court to return the case to the board for all members to review the record and consider whether the owner surrendered her license for a substantive reason, R.C. 4768.06(B)(4).

## Business Law

**Interference with contract.** Total Quality Logistics, L.L.C. v. Alliance Shippers, Inc., 2021-Ohio-781 | 12th Appellate District | 3/15/21 In plaintiff-logistics company's tortious interference with non-compete contract (NCA) action against defendant-shipping company after defendant employed plaintiff's former employee, judgment for defendant was error since plaintiff sufficiently raised Siegel factors to show that defendant's interference with the NCA was not justified, defendant

knowingly refused to acknowledge terms of employee's NCA and therefore could not have formed good faith belief regarding its enforceability, and defendant acted improperly in interfering with the NCA.

**Unjust enrichment/Breach of contract.** Deffren v. Johnson, 2021-Ohio-817 | 1st Appellate District | 3/17/21 In unjust enrichment and breach of employment agreement action brought by plaintiff-buyer of business assets against defendants-family members of deceased business owner, arising from conflict over ownership of business accounts, judgment for plaintiff was error since decedent's wife was not a party to express sales agreement and received no benefit from plaintiff, so elements of unjust enrichment were not met, decedent's children who were employed by plaintiff had no contractual obligations, and there was no violation of a duty of good faith and loyalty.

**Contract/Fraud.** Harris v. Sunsong Holdings, Inc., 2021-Ohio-1213 | 2nd Appellate District | 4/9/21 In plaintiffs-business owners' breach of contract action against defendant-purchaser of plaintiffs' business, judgment in favor of defendant on counterclaims for breach of contract and fraud was not error since, inter alia, trial court concluded that plaintiffs sought to deceive defendant by misrepresenting the financial status of plaintiffs' business, particularly with respect to new business, which was unprofitable and unsustainable.

**Successor liability/Trespass.** Deep-Rock Disposal Solutions, L.L.C. v. Forté Prods., L.L.C., 2021-Ohio-1436 | 4th Appellate District | 4/21/21 In action by plaintiff-owner of pipeline to declare that any trespass claim defendants-property owners had against original pipeline was released on sale of assets to plaintiff, trial court did not err in ruling that plaintiff was not a successor of original owner and had no successor liability for any of original owner's obligations; however, defendants could bring trespass claims against plaintiff for its own trespass on the properties, which commenced when plaintiff became owner of the pipeline and failed to remove the pipeline from the properties, and continues until plaintiff either removes the pipeline or obtains the defendants' permission to cross their properties.

### **Extension of time for claims.**

Cuyahoga Cty. Case Mgt. v. Clark Indus. Insulation Co., 2021-Ohio-1405 | 8th Appellate District | 4/22/21 Extension of five-year statutory period, allowing defendant-corporation to continue acting as a corporation for winding up its affairs following voluntary dissolution, and appointment of a receiver after defendant had defended itself in asbestos litigation was error since the extension was granted in response to motions filed on behalf of current and future clients with asbestos-related claims; proceedings under R.C. 1701.89 to extend time to wind up corporate affairs to allow existing claims are limited to those for the supervision of winding up of affairs of voluntarily-dissolved corporations and are not in furtherance of independent actions, including product liability tort actions.

### **Civil Rights**

**Jurisdiction.** State ex rel. Third Family Health Servs. v. Ohio Civ. Rights Comm., 2021-Ohio-1179 | 5th Appellate District | 4/6/21 In relator-non-profit health center's action seeking to prohibit respondent-civil rights commission from conducting hearings concerning complaints of discrimination against relator, writ of prohibition asserting lack of jurisdiction is denied and summary judgment in favor of commission is granted since conciliation was attempted after complaints of discrimination and notices of hearing were issued, but before documents were served, in compliance with R.C. 4112.05(B)(5).

### **Consumer Law**

**Bankruptcy.** McCruter v. Advantage Imaging of Lake Cty., L.L.C., 2021-Ohio-433 | 8th Appellate District | 2/18/21 In debtor's action alleging that creditor-medical practice violated the Consumer Sales Practices Act when it allegedly attempted to collect on a debt in violation of discharge injunction for debtor's bankruptcy, trial court did not err in granting creditor's motion for judgment on the pleadings since debtor's claim is pre-empted by federal bankruptcy law because a debtor injured by a violation of a discharge injunction has no right to statutory damages and must bring an action against creditor for contempt in bankruptcy court, 11 U.S.C. Sec. 524.

### **Consumer Sales Practices Act.**

Anderson v. Discount Drug Mart, Inc., 2021-Ohio-693 | 8th Appellate District | 3/11/21 In plaintiff's action against defendant-drug store seeking declaratory and injunctive relief under the Consumer Sales Practices Act (CSPA) for deceptive pricing promotions, summary judgment in favor of defendant was not error where, although defendant's promotions did not clearly state that consumer receives same pro-rata discount on items regardless of quantity purchased, the promotions are not deceptive under R.C. 1345.02 because defendant did not represent that a specific price advantage existed when it did not, and defendant did not fail to make disclosures required by Ohio Adm. Code 109:4-3-02(A)(2)(g).

**Attorney fees.** Phillips v. Ratchet Automotive & Performance, 2021-Ohio-1033 | 10th Appellate District | 3/30/21 In plaintiff's action alleging violation of the Consumer Sales Practices Act (CSPA), resulting in a default judgment for plaintiff, trial court erred in declining to award reasonable attorney fees under the CSPA since the court's findings supported an award of reasonable attorney fees based on knowing violations of the CSPA, but the court's reasoning that plaintiff did not provide evidence as to the amount and reasonableness of the fees was without merit because the court failed to give plaintiff the opportunity to present that evidence.

**Pleading.** Crenshaw v. Michael J.'s Auto Sales, 2021-Ohio-1468 | 1st Appellate District | 4/28/21 In plaintiff's action against defendant-auto seller for failure to repair purchased vehicle prior to delivery, trial court erred in finding that defendant violated the Consumer Sales Practices Act where plaintiff did not make a claim for violations of the Act, nor did she request treble damages in her pleadings, and therefore defendant had no notice of consumer claim, Civ.R. 8(A); judgment in favor of plaintiff on breach of agreement and resultant damages is affirmed.

### **Contracts**

**Arbitration/Standing.** SW Acquisition Co., Inc. v. Akzo Nobel Paints, L.L.C., 2021-Ohio-309 | 8th Appellate District | 2/4/21 Where plaintiff-purchaser of assets of bankrupt company, that had agreed with defendant-company to purchase retail stores and to be a dealer of defendant's products under

Authorized Dealer Agreement (ADA), brought action to appoint an arbitrator, R.C. 2711.03(A), and to enforce mandatory arbitration provisions in the ADA, trial court exceeded its discretion under R.C. 2711.03 by prematurely reviewing whether plaintiff had standing to pursue contract and fraud claims that were not before the court since the court had subject-matter jurisdiction to adjudicate action to compel arbitration, and plaintiff had standing to pursue the action based on its rights and interests under the ADA.

**Breach.** JCASA, Ltd. v. Dean, 2021-Ohio-380 | 8th Appellate District | 2/11/21 In breach of contract action by installer of gutters against homeowner for failure to make full payment, trial court did not err in ruling in favor of installer where a discount promotion broadcast on the radio after parties signed contract did not provide a basis for homeowner to reduce the amount owing under the contract, and argument that installer's acceptance of a check with the notation "paid in full" constituted an accord and satisfaction was not raised by homeowner until he objected to magistrate's decision and was not properly raised at trial, Civ.R. 53(D)(4).

**Breach.** Clay v. Shriver Allison Courtley Co., 2021-Ohio-538 | 7th Appellate District | 2/24/21 In plaintiffs-heirs' breach of contract action against defendant-funeral home for substandard care during conduct of funeral services for their mother, trial court did not err on remand in granting partial summary judgment for defendant as to two heirs since the contract for funeral services was executed between defendant and only one heir, and therefore the other heirs lacked standing to assert the claim, law of the case doctrine does not apply because standing was not a matter addressed by the court in the original case, and punitive damages are prohibited for breach of contract.

**Breach.** Lakeside Produce Distrib. v. Wirtz, 2021-Ohio-505 | 8th Appellate District | 2/25/21 In husband's action against attorney who represented him in divorce collaborative family law process, alleging that attorney breached confidentiality provision of contract by disclosing divorce to husband's business competitor, it was not error to dismiss complaint for failure to state a claim since parties' contract sets forth general ideals without any express confidentiality language, and the language is aspirational in nature and does not

## Contracts (continued)

create any specific contractual terms regarding confidentiality, Civ.R. 12(B)(6); also, the collaborative law process was not a special circumstance warranting parol evidence to construe the parties' contract.

**Attorney fees.** Mockensturm v. McIlwain, 2021-Ohio-532 | 6th Appellate District | 2/26/21 In father's action against former son-in-law to recover balance due on outstanding promissory note, trial court erred in declining to award father reasonable attorney fees where, although he did not bring a separate claim for attorney fees, his prayer for relief requested judgment including attorney fees, and promissory note clearly and unambiguously obligated borrower to pay all costs of collection, including attorney fees, if payment obligation under note was not paid when due.

**Breach/Prevailing wage.** Am. Pavements, Inc. v. Ohio Dept. of Transp., 2021-Ohio-1530 | Ohio Court of Claims | 3/10/21 In plaintiff-paving contractor's breach of contract action against defendant-department of transportation challenging defendant's demand that plaintiffs pay certain workers prevailing wages under federal law, summary judgment in favor of defendant is granted since parties' contract gave defendant authority, after providing written notice to plaintiff, to suspend payment until violations of prevailing wage requirements were met, and defendant's written directive concerning wages was not a change to terms of contract nor beyond scope of contract.

**Breach.** Artistic Carpet Warehouse, Inc. v. King, 2021-Ohio-849 | 8th Appellate District | 3/18/21 In flooring store's breach of contract action against customer for failing to make payment for flooring and installation, arising from dispute about store's performance, summary judgment for customer was error where parties' agreement which provided that customer would tender final payment once installation problems were fixed does not negate her obligation to pay for services and goods, store partially performed under the contract, the installation problems were not part of original quote and were not essential to purpose of agreement, and question remains as to damages.

**Arbitration.** Little Aquanauts, L.L.C. v. Makovich & Pusti Architects, Inc., 2021-Ohio-942 | 8th Appellate District | 3/25/21 In swim school's action against pool construction company for negligent misrepresentation and violation of consumer law after pool was found to be noncompliant with state regulations, trial court did not err in denying company's motion to dismiss or compel arbitration since the parties' agreement's arbitration provision covers disputes arising under conditions of sale and school's claims allege that company supplied false information regarding suitability of product for school's space, which was outside the scope of agreement terms.

**Breach.** Kent v. Leo's Ent., L.L.C., 2021-Ohio-946 | 8th Appellate District | 3/25/21 In property owner's breach of contract action against contractor for alleged failure to complete tree trimming and removal as agreed in oral contract, trial court did not err rendering judgment in favor of defendant where magistrate's decision substantially complied with Civ.R. 53(D)(3), additional findings of fact and conclusions of law were not necessary, and parties had oral contract for tree work performed but never had an enforceable contract for additional work that plaintiff claims defendant failed to complete.

**Breach/Online.** Valentine v. Ebay, Inc., 2021-Ohio-1160 | 7th Appellate District | 3/29/21 In plaintiff-small business owner's breach of contract action against defendant-online auction company for changing plaintiff's vendor status and charging additional fees following dispute filed by plaintiff's customer when a refund was delayed, it was not error to rule in favor of defendant where plaintiff suffered no prejudice and was bound by terms of agreement with defendant, and even though defendant did not appear for trial, R.C. 1925.05(A) does not require default judgment in favor of plaintiff and allows the court to make a finding on the merits.

**Breach/Online.** Valentine v. PayPal, Inc., 2021-Ohio-1159 | 7th Appellate District | 3/29/21 In plaintiff-small business owner's breach of contract action against defendant-online payment processor, alleging that defendant refunded purchaser on the erroneous determination that purchaser was justified in rejecting plaintiff's product, trial court did not err in ruling for defendant where defendant requested and obtained information

from both the buyer and plaintiff to make its determination, plaintiff failed to establish that defendant did not fulfill its obligations, and plaintiff did not demonstrate damages as a result of any such failure.

**Breach.** Gionino's Pizzeria, Inc. v. Reynolds, 2021-Ohio-1289 | 7th Appellate District | 3/31/21 In plaintiff-restaurant franchise's breach of contract action against defendants-franchise purchasers seeking injunctive relief to enjoin defendants from operating pizza shop, trial court erred in determining the merits of the case following preliminary injunction hearing without proper notice to parties, finding that no contract between the parties existed, where defendants' admissions show that they intended to operate a franchise, they purchased a business franchise from plaintiff, and question remains as to defendants' intent to be bound by plaintiff's franchise agreement.

**Res judicata.** Kobal v. Edward Jones Secs., 2021-Ohio-1088 | 8th Appellate District | 4/1/21 In plaintiff's action for breach of contract, unjust enrichment and negligence, asserting that defendant allowed securities he used as collateral for bail to be transferred to an investment account owned by his former wife's company, trial court did not err in dismissing claim as to one defendant and in granting judgment on the pleadings to the other defendant on reasoning that the claims were barred by res judicata where trial court in underlying divorce action ruled that plaintiff voluntarily transferred his investment account to his wife's company, and in plaintiff's attempt to avoid the application of res judicata by asserting allegations of fraud, he failed to plead those allegations with the required particularity.

**Non-compete.** Lykins Oil Co. v. Corbin, 2021-Ohio-1126 | 12th Appellate District | 4/5/21 In plaintiff-oil company's action seeking restraining order and preliminary injunction against defendants-former employee and his new employer for alleged violation of non-compete agreement, trial court erred in granting defendants' motion to modify preliminary injunction to allow pursuit of new clients since a change in circumstances is required for modification of an injunction, the court improperly determined that it was unable to weigh evidence regarding a change in circumstances, and the court denied plaintiff the ability to cross-examine former employee.

**Appeal.** Vaughn Industries, L.L.C. v. LG Electronics, Inc., 2021-Ohio-1253 | 5th Appellate District | 4/12/21 In state agency's breach of contract action against HVAC contractor for failure to comply with contract, appeal of trial court's dismissal of contractor's third-party indemnification/contribution claims against supplier of HVAC system is dismissed for lack of a final appealable order since dismissal of contractor's claims did not affect a substantial right, and while its product liability claim is a substantial right, dismissal of that claim did not affect the right because the claim is contingent on resolution of underlying action.

**Attorney fees/Release.** Phillips v. Columbia Res., Ltd., 2021-Ohio-1231 | 9th Appellate District | 4/12/21 In lawyer's breach of contract action against client to recover charges for legal services, trial court did not err in granting client's motion for judgment on the pleadings where lawyer previously entered into a release discharging client from obligations, lawyer had knowledge of claims for legal services for years prior to executing the release, and the unambiguous language of release shields the client from specific claims raised in lawyer's complaint, Civ.R. 12(C).

**Breach.** Dart v. Katz, 2021-Ohio-1429 | 2nd Appellate District | 4/23/21 In action for breach of contract and related claims arising from plaintiff's sale of building to company owned by individual defendant, to act as placeholder of building, and defendant's subsequent encumbrance of building, trial court erred in dismissing complaint against individual defendant for failure to state a claim since defendant signed agreement between the parties both as an agent for his company and on his own behalf, he promised not to encumber the property, he obtained a loan, and as owner and agent of his company, signed a mortgage on his company's behalf, so he could be held personally liable for the breach of contract.

**Credit card account.** Unifund CCR, L.L.C. v. Birch, 2021-Ohio-1487 | 8th Appellate District | 4/29/21 In breach of contract and related claims action by plaintiff-assignee of credit card account against defendant-cardholder, trial court did not err in granting summary judgment to plaintiff since credit report provided by defendant showing zero balance in the account was consistent with the debt having been transferred

to another creditor, defendant did not provide any evidence that he paid the final or outstanding amount owed on his account, and he did not set forth any factual evidence showing a genuine issue of material fact.

**Settlement agreement.** Romanowich v. Solich Music & Piano Co., 2021-Ohio-1502 | 10th Appellate District | 4/29/21 In plaintiff-employee's action for, inter alia, breach of contract against defendant-former employer for failure to pay commission earned during sales event, resulting in settlement agreement, trial court did not err in granting employer's motion to enforce the agreement since evidence supports finding that employee's attorney had actual authority to settle the lawsuit for a specified amount, plaintiff's medical episode during negotiations did not negate his agreement to terms of settlement, and parties and counsel engaged in extensive discussions regarding claims.

**Breach.** He v. Half Price Heating & Air, 2021-Ohio-1599 | 1st Appellate District | 5/7/21 In buyer's breach of furnace installation contract action, alleging that seller installed a different furnace from the one called for in the written contract, trial court did not err in adopting magistrate's decision in favor of seller where seller presented evidence that the furnace was manufactured by the specified company and had the specified heating efficiency, and the fact that the furnace was labeled with the manufacturer's initials rather than its full name was not evidence of breach of contract.

## Construction Law

**Arbitration.** Roark v. Keystone Homes, L.L.C., 2021-Ohio-707 | 8th Appellate District | 3/11/21 In plaintiffs-property owners' action against defendant-construction company alleging, inter alia, that defendant refused to return deposit after plaintiffs cancelled contract for construction of home, it was not error to grant defendant's motion to stay proceedings pending arbitration since construction contract has an arbitration clause which is not affected by alleged cancellation of contract, the parties dispute whether the contract was properly cancelled, and plaintiffs' claims, including ones characterized as intentional torts, fall within the scope of agreement, R.C. 2711.02.

## Criminal Law

**Jury.** State v. Williams, 2021-Ohio-256 | 3rd Appellate District | 2/1/21 In a conviction of, inter alia, drug offenses, the trial court did not err by excluding two African-American prospective jurors for cause since race played no role in the excuse of one juror where based on juror's expression of her uncertainty to fairly and impartially determine facts of the case because of her religious beliefs, and the other juror expressed generalized bias against the criminal justice system and his unwillingness to set those experiences aside.

**Misconduct at emergency.** State v. Mapes, 2021-Ohio-257 | 3rd Appellate District | 2/1/21 Conviction of misconduct at an emergency, R.C. 2917.13(A)(1), was against the weight of evidence since defendant did not hamper officer's investigation at the motor vehicle accident scene by not complying with the officer's order in the way officer suggested since it would have potentially put another person in peril, but instead defendant found an alternative way to comply that was safer under the facts presented and did not hamper officer's investigation.

**Plea.** State v. May, 2021-Ohio-261 | 3rd Appellate District | 2/1/21 In a conviction by plea of aggravated assault and felonious assault, claim that defendant entered an Alford plea is not supported by the trial court record where defendant's single, tenuous statement that he did not agree to the facts of the aggravated assault charge did not constitute an Alford plea since he did not state or suggest that he was innocent of the charges, and the written plea agreement acknowledged that he was aware that there must be a factual basis for his plea.

**Search.** State v. Spratley, 2021-Ohio-262 | 3rd Appellate District | 2/1/21 In a conviction of, inter alia, improperly handling firearms in a motor vehicle, denial of motion to suppress was not error where officer had probable cause to make traffic stop and, since neither driver nor defendant-passenger had a valid driver's license, officer was required to prevent them from driving vehicle, officer had a drug dog perform a sniff while waiting for a driver's friend to arrive, dog alerted beside the car where defendant was sitting, and defendant admitted to officer that gun found in car was his.

**Evidence.** State v. Glenn, 2021-Ohio-264 | 3rd Appellate District | 2/1/21 In a conviction of drug and related offenses, claim that the trial court committed multiple errors of evidentiary issues resulting in cumulative error is without merit where prior videos not involving the defendant were not made part of the record and were not relevant to the drugs charges, and exclusion of officer's proffered testimony of what an individual told her where the individual invoked his right to remain silent at defendant's trial need not be considered since there was no longer a cumulative error issue.

**Plea.** State v. Blair, 2021-Ohio-266 | 3rd Appellate District | 2/1/21 In consolidated appeals of two cases in which defendant pled guilty to burglary in one case and in the other case, defendant pled no contest to reckless homicide, claim that pleas were not made knowingly, voluntarily and intelligently is without merit since record demonstrates the trial court did not completely fail to comply with notification required by Crim.R. 11(C)(2)(b), and moreover, the defendant failed to demonstrate that he was prejudiced.

**Speedy trial.** State v. Zahn, 2021-Ohio-267 | 3rd Appellate District | 2/1/21 In a plea to unlawful sexual conduct with a minor, R.C. 2907.04(A), (B) (1), denial of motion to dismiss on speedy trial grounds was not error where the trial court's 186 day delay in ruling on a motion to suppress was not unreasonable in light of the serious nature of the felony charges and complexity of the facts, including conflicting testimony submitted in the motion to suppress and the difficulty of the legal issues involved in view of the trial judge's schedule.

**Impaired driving.** State v. Miller, 2021-Ohio-277 | 12th Appellate District | 2/1/21 In a conviction by plea to, inter alia, OVI, R.C. 4511.19(A)(1)(a), although trial court did not err in denying motion to suppress for lack of probable cause to arrest for OVI based on officer's observations of defendant and field tests, the state failed to show substantial compliance with the Ohio Admin. Code requirements for the breathalyzer used; matter is remanded at the point where the trial court erroneously denied a motion to suppress in order for the defendant to assess his decision to plead.

**Domestic violence.** State v. Black, 2021-Ohio-268 | 3rd Appellate District | 2/1/21 Bench conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where evidence was presented that defendant and victim were cohabiting for a period of time, victim suffered a broken nose and testified that defendant caused it by kicking her in the face, and credibility of victim's and defendant's testimonies was for the trial court as trier of fact, and it did not lose its way in its credibility determinations.

**Sex offender classification/Plea.** State v. Veite, 2021-Ohio-290 | 1st Appellate District | 2/3/21 In conviction by plea of, inter alia, voyeurism, R.C. 2907.08, denial of state's motion to classify defendant as a Tier I sex offender was error since the tier classification is based solely on the sex offense committed and is automatic, and the fact that defendant has served his prison sentence does not implicate double jeopardy; however, the trial court also erred by accepting defendant's plea since it was not validly made because the court completely failed to inform him of the effect of his guilty plea, Crim.R. 11(B)(1).

**Telecommunications harassment.** State v. Smith, 2021-Ohio-291 | 1st Appellate District | 2/3/21 Conviction of telephone harassment, R.C. 2917.21(B) (1), was not supported by sufficient evidence since the prosecution failed to prove that appellant sent a Facebook friend request with a specific purpose to threaten the person who received the request, where the friend request did not express any intent to threaten that person, R.C. 2901.22(A), and it was sent prior to the time that appellant allegedly assaulted the complainant's daughter; appellant is discharged.

**Evidence.** State v. Hill, 2021-Ohio-294 | 1st Appellate District | 2/3/21 In a bench conviction of four counts of cruelty against companion animals, R.C. 959.131(D)(1), although the trial court erred in admitting hearsay statements about who owned the dogs, as well as by allowing admission of a video of horses since it was inadmissible other acts evidence, Evid.R. 404(B), errors were harmless since appellant admitted to ownership of the dogs and to his inability to care for them, as well as testimony by officer of the conditions the dogs were subjected to and that they were malnourished.

**Ineffective assistance.** State v. Patton, 2021-Ohio-295 | 1st Appellate District | 2/3/21 In a conviction of two counts of murder, defense counsel did not provide ineffective assistance by not presenting expert testimony by a crime scene reconstructionist to highlight evidence presented that defendant was not the actual shooter since claim is purely speculation, and counsel's decision not to call an expert witness, but instead rely on cross-examination of state's expert, is a matter of trial strategy.

**Impaired driving.** State v. Albright, 2021-Ohio-292 | 1st Appellate District | 2/3/21 In a conviction of OVI, R.C. 4511.19(A)(1)(a), although the trial court incorrectly relied on Mitchell, a U.S. Supreme Court plurality opinion concerning applicability of the exigent circumstances doctrine to drivers under the influence of alcohol in denying motion to suppress blood draw of unconscious defendant-driver, judgment is affirmed since motion to suppress should have been resolved on statutory grounds but, on appeal, the defendant failed to challenge applicability of the implied consent statute, R.C. 4511.191(A)(4).

**Reopening.** State v. Cottingham, 2021-Ohio-306 | 8th Appellate District | 2/3/21 Application to re-open appeal, App.R. 26(B), is granted since appellate counsel should have argued that conviction of two aggravated burglary counts merged as allied offenses because the burglary occurred in one house and, once the trespass occurred, the crime was complete and the number of people in the dwelling did not create a separate animus for each person; remanded for merger of the counts and to impose sentence on the count the state chooses.

**Final order.** State v. Richards, 2021-Ohio-389 | 4th Appellate District | 2/3/21 In a conviction by plea of aggravated theft, R.C. 2913.02(A)(2) and (B)(2), where the appellant failed to comply with the plea agreement, appeal is dismissed for lack of a final order since none of the court's journal entries disposes of the theft count contained in the indictment, R.C. 2505.02(B).

**Mootness.** Cleveland v. Harris, 2021-Ohio-305 | 8th Appellate District | 2/4/21 In a conviction of failure to comply with an order of the city building department in violation of municipal ordinance concerning appellant's property and subsequent violation of community

control and imposition of 180-day jail sentence, appeal is dismissed as moot since appellant has served his jail sentence, and he did not inform court of any collateral consequences based on his conviction and sentence.

**Voyeurism.** Cleveland v. Imrie, 2021-Ohio-308 | 8th Appellate District | 2/4/21 Bench conviction of voyeurism, R.C. 2907.08(B), met the sufficiency and weight of evidence standards where female victim recorded with her cell phone a male defendant using his cell phone in a women's restroom attempting to record her while she was in a stall and undressed, and requirement of a defendant's sexual arousal or gratification was met where circumstantial evidence demonstrates no innocent non-sexual explanation for his conduct, and the court did not lose its way in its credibility determinations.

**Jury instruction.** State v. Battles, 2021-Ohio-310 | 8th Appellate District | 2/4/21 In a conviction of, inter alia, felonious assault, R.C. 2903.11(A)(1), the trial court did not commit plain error in giving a jury instruction on complicity by including a conspiracy instruction since it was part of an overall instruction on complicity encompassing several different theories, and the trial court also instructed the jury on the actual charge in the indictment for felonious assault, and inclusion of the conspiracy instruction did not affect the outcome of the case.

**Dismissal.** Cleveland v. Gatens, 2021-Ohio-313 | 8th Appellate District | 2/4/21 In an appeal by the state of the trial court's dismissal of OVI and reckless operation misdemeanor charges, the trial court erred by failing to make findings of fact and reasons for the dismissal of the OVI charge pursuant to Crim.R. 48, and the record does not identify the trial court's rationale; remanded for further proceedings.

**Ineffective assistance.** State v. Kelly, 2021-Ohio-325 | 2nd Appellate District | 2/5/21 In a conviction of, inter alia, felonious assault, defendant's trial attorney did not provide ineffective assistance by not filing a motion to suppress a pre-trial identification since a photospread was not unnecessarily suggestive, even if the defendant's head appeared slightly larger than the other photos, nor was the attorney ineffective by not seeking dismissal of certain jurors or in not exhausting peremptory challenges where it was not shown that

any of the jurors exhibited bias toward him or caused prejudice to him.

**Restitution/Costs.** State v. Jordan, 2021-Ohio-333 | 6th Appellate District | 2/5/21 In a conviction by plea of six counts of robbery and agreement to pay restitution, the trial court did not err by ordering restitution where the defendant agreed in a plea agreement to pay restitution, even if the actual amount of restitution was not specified in the plea agreement, nor did the court err by imposing the mandatory costs of prosecution, R.C. 2947.23(A)(1)(a), but the court erred by imposing costs of confinement and assigned counsel without making a finding of defendant's present or future ability to pay.

**Transcript.** State v. McGlown, 2021-Ohio-334 | 6th Appellate District | 2/5/21 Following a conviction of sexual offenses that was affirmed and multiple post-conviction motions that were denied, denial of motion for production of the sentencing hearing transcript at state expense was not error since there was no pending matter when the motion was filed.

**Plea withdrawal.** State v. Winfield, 2021-Ohio-336 | 6th Appellate District | 2/5/21 Following a 2013 conviction by Alford plea of aggravated murder that was affirmed, denial of appellant's successive pro se post-conviction motion to withdraw plea was not error where issues raised should have been brought in the direct appeal, and thus the motion is barred by res judicata and challenge after the conviction to the application of the violent offender database statutes as unconstitutional may not be raised by a motion to withdraw plea.

**Plea withdrawal.** State v. Risner, 2021-Ohio-342 | 3rd Appellate District | 2/8/21 In conviction of complicity to burglary, denial of pre-sentencing motion to withdraw plea was not error where the trial court considered the appropriate factors, and defendant's claim that she was "scared and confused" when she pled guilty two months prior to the motion to withdraw plea was no more than a change of heart, and a co-defendant's claimed letter exonerating defendant was not produced and, moreover, the co-defendant appeared in court and confirmed defendant's participation in the crime.

**Plea.** State v. Beatty, 2021-Ohio-355 | 5th Appellate District | 2/8/21 In a conviction by plea in consolidated cases of, inter alia, aggravated burglary and assault on a police officer where plea was validly made, even though the trial court failed to inform defendant that his plea was a complete admission of guilt as required by Crim.R. 11(C)(2), where the defendant did not suffer prejudice since he did not assert actual innocence, but instead his statements on the record acknowledged his guilt.

**Ineffective assistance.** State v. Carter, 2021-Ohio-358 | 5th Appellate District | 2/8/21 In defendant-inmate's conviction of murder of another inmate, defense counsel did not provide ineffective assistance by not securing civilian clothing for defendant where clothing, although prison-issued, was described on the record as non-descript and did not identify him as a prisoner and, moreover, the jury was aware that defendant was an inmate, and claims that counsel was ineffective as to voir dire, opening statement and failure to subpoena a witness were not supported by any record references or citations to authority.

**Court costs.** State v. Shreve, 2021-Ohio-351 | 5th Appellate District | 2/8/21 Denial of pro se motion to vacate or suspend court costs following conviction of sexual offenses was not error since a trial court is not required to consider a defendant's present or future ability to pay when ruling on motion to vacate, suspend or modify court costs under R.C. 2947.23(C), Taylor.

**Plea.** State v. Davis, 2021-Ohio-352 | 5th Appellate District | 2/8/21 In a conviction by plea of sexual offenses, although the trial court failed to substantially comply with the non-constitutional requirements of Crim.R. 11(C)(2)(b) by not advising the appellant during the plea colloquy that the court could proceed to judgment and sentence upon acceptance of his guilty plea, the appellant incurred no prejudice because the court deferred sentencing for the preparation of a pre-sentence investigation report.

**Animal cruelty.** State v. Joiner, 2021-Ohio-359 | 5th Appellate District | 2/8/21 Conviction of four counts of cruelty to animals, R.C.959.13, met the sufficiency and weight of evidence standards since the investigating officer's testimony concerning the poor condition of the dogs was corroborated by humane

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officer's subsequent observations of the dogs that led him to remove them and, although the defendant claimed that two pit bull dogs were her ex-boyfriend's dogs, she had them for over a month and she testified that she took responsibility for them.

**Jury instruction.** State v. Loy, 2021-Ohio-403 | 4th Appellate District | 2/8/21 In a conviction of, inter alia, aggravated murder, the trial court did not err by not instructing jury on voluntary manslaughter as an inferior-degree offense of aggravated murder and murder since evidence presented at the trial did not reasonably support both an acquittal on the charged offenses and a conviction on the offense of voluntary manslaughter since evidence that appellant feared for the safety of himself or another does not constitute sudden passion or a fit of rage under the voluntary manslaughter statute.

**Mootness.** State v. Yontz, 2021-Ohio-382 | 5th Appellate District | 2/9/21 In a drug prosecution following grant of a request for intervention in lieu of conviction, R.C. 2951.041, and subsequent denial of "Motion to Modify Terms of Intervention in Lieu of Conviction," appeal is dismissed as moot since the appellant has complied with the requirements concerning Suboxone, and thus the issue of whether the trial court's policy concerning Suboxone use as applied to appellant violates anti-discrimination and equal protection laws is moot.

**Jury instruction.** State v. Hill, 2021-Ohio-388 | 5th Appellate District | 2/10/21 In a conviction of aggravated burglary, the trial court did not mislead the jury in addressing a jury question about defining immediate physical reach by referring the jury to the original instructions because the words "immediate physical reach" do not constitute a legal phrase requiring a specific instruction since the phrase is made up of plain language and jury members could rely on their own understanding of the words.

**Plea.** State v. Jones, 2021-Ohio-370 | 1st Appellate District | 2/10/21 In a conviction by plea of felonious assault, the record reflects no error in the trial court's acceptance of guilty plea where the court complied with all aspects of Crim.R. 11(C), and appellant's claims of coercion by counsel and medication-

induced incompetence depend on evidence outside the record and thus are not appropriate for review on direct appeal where the defendant at the plea hearing had expressed satisfaction with counsel and stated that his medication assisted him in keeping his mind clear.

**Ineffective assistance.** State v. Harris, 2021-Ohio-371 | 1st Appellate District | 2/10/21 In a conviction of aggravated robbery and weapons offense, the defense counsel did not provide ineffective assistance in not employing an expert witness to conduct fingerprint testing on the victim's phone and driver's license of victim's deceased sister that was taken from the victim during the robbery and recovered by police at the house that appellant was found in since counsel's decision fell within reasonable trial strategy, and appellant's conclusory statements outcome would have been different failed to demonstrate prejudice.

**Sentencing.** State v. Ludwig, 2021-Ohio-383 | 5th Appellate District | 2/10/21 In a conviction by plea of first-degree felony trafficking in drugs and imposition of mandatory minimum 10-year prison term and an indefinite term of 15 years pursuant to R.C. 2967.271 of the Regan Tokes Act, appeal challenging sentence is not ripe for review since appellant has not yet been subject to the challenged provisions of R.C. 2967.271.

**Evidence.** State v. Thompson, 2021-Ohio-376 | 8th Appellate District | 2/11/21 In a conviction of, inter alia, felonious assault and aggravated vehicular assault, admission of crash data report of single vehicle crash resulting in serious injuries to defendant's-driver's acquaintance was not error since it was not inadmissible hearsay where the state established through officer's testimony authenticating that the report was generated as a result of defendant's vehicle crashing into a fire hydrant, with the report itself providing information concerning, inter alia, the vehicle's speed five seconds before and at the time of impact.

**Evidence.** State v. Smith, 2021-Ohio-378 | 8th Appellate District | 2/11/21 In a conviction of, inter alia, murder, challenge to the reliability of evidence introduced through touch DNA and ballistic toolmark analysis evidence connecting defendant to gun used to murder victim went to the weight of the evidence, and the jury was presented with sufficient expert testimony and evidence to decide whether the evidence and testimony were reliable.

**Ineffective assistance.** State v. Lanier, 2021-Ohio-379 | 8th Appellate District | 2/11/21 In a bench conviction of, inter alia, aggravated theft, the defense counsel did not provide ineffective assistance where appellant's claim that counsel failed to review victim's recorded phone calls that appellant claimed contained calls in which victim told him that he did not commit the offenses since the recorded calls are not part of the record, and there is no evidence in the record that counsel did not review the recordings, and counsel's decision not to use the recordings could have been a trial strategy.

**Bond.** State v. Ogletree, 2021-Ohio-381 | 8th Appellate District | 2/11/21 Following a 2005 conviction of, inter alia, murder that was affirmed, denial of 2020 pro se denial of "motion to release surety from obligation" was not error since there is nothing in the record to indicate bond was ever posted, and thus there was no surety to discharge or release.

**Restitution.** State v. Poff, 2021-Ohio-384 | 5th Appellate District | 2/11/21 In a conviction by plea of felonious assault, the trial court erred by ordering of \$12,000 restitution where evidence presented by the victim at the sentencing hearing was insufficient to show the amount of actual economic loss with reasonable certainty where based on victim's estimate with no supporting documentation and, since defendant disputed the amount of restitution provided by victim's estimate, the trial court was required to hold an evidentiary hearing, R.C. 2929.28(A)(1).

**New trial.** State v. Branco, 2021-Ohio-385 | 5th Appellate District | 2/11/21 Following a 1991 conviction of, inter alia, aggravated murder that was affirmed, denial of a 2020 motion for leave to file a motion for a new trial and a motion for a new trial was not error where the appellant failed to show by clear and convincing evidence that he was unavoidably prevented from filing his motion within the required 120 day period where he was relying on judgment entries of a co-defendant's sentencing and a partial transcript of the co-defendant's trial testimony that were available in 1991, Crim.R. 33(A)(6).

**Aggravated menacing.** State v. Foster, 2021-Ohio-393 | 2nd Appellate District | 2/12/21 Bench conviction of aggravated menacing, R.C. 2903.21(A), was supported by sufficient evidence where manager and an employee of a fast



food restaurant testified that defendant refused to purchase food or leave when asked to do so by the manager and defendant threatened to shoot the manager while defendant was reaching into his pocket.

**Post-conviction relief.** State v. Thomas, 2021-Ohio-407 | 6th Appellate District | 2/12/21 Following a 2017 conviction of, inter alia, aggravated burglary that was affirmed, denial of petition for post-conviction relief was not error since claims that appellant raised in his petition could have been raised in his direct appeal, and thus his claims are barred by res judicata and claim that evidence of ineffective assistance of counsel was outside the trial record is without merit where appellant has presented no evidence demonstrating a different outcome had the trial court record included the additional evidence not presented by the trial counsel.

**Mootness.** State v. Reed, 2021-Ohio-406 | 6th Appellate District | 2/12/21 In a conviction of misdemeanor operating an under-speed vehicle, R.C. 4511.214(A) (2), appeal is dismissed as moot since the appellant voluntarily paid the fine imposed without seeking a stay pending appeal, and he does not demonstrate that he will incur some collateral disability or loss of civil rights arising from the conviction.

**Reopening.** State v. Lucas, 2021-Ohio-437 | 8th Appellate District | 2/12/21 Pro se application to re-open appeal, App.R. 26(B), is denied where appellant's allegations that perjury and falsehoods were the basis for his indictment and conviction and that the state acted in bad faith are not supported by the record, and appellant's speculation what he believes should have been done does not negate the evidence presented.

**Self-defense.** State v. Williams, 2021-Ohio-443 | 5th Appellate District | 2/16/21 In a conviction of, inter alia, felony murder, the trial court did not err by finding that the state presented sufficient evidence to prove beyond a reasonable doubt that defendant did not shoot in self-defense at a car in which the victim was a passenger since the jury could reasonably have found defendant was at fault for creating the situation leading to the shooting based on the testimony and evidence presented, including evidence that defendant shot while in a car behind the car in which the victim was sitting, R.C. 2901.05(B)(1).

**Evidence.** State v. Fester, 2021-Ohio-410 | 12th Appellate District | 2/16/21 In a conviction of drug offenses, the trial court did not err by denying defendant's request to play for the jury and to admit into evidence the full recording of her interview with officers since the video was duplicative of officer's testimony admitting that defendant sat in a police department room for a couple of hours before the interview; also, redaction of officer's statements to defendant about the felony level of the offenses and amount of prison-time defendant faced was not error since statements concerned sentencing issues outside of the jury's province.

**Domestic violence/Civil stalking protection order.** State v. Conklin, 2021-Ohio-417 | 11th Appellate District | 2/16/21 Bench conviction of domestic violence and violation of a civil stalking protection order (CSPO) met the sufficiency and weight of evidence standards where testimony of the defendant and the victim demonstrated that they had cohabited within the past five years prior to the domestic violence, a protected party under a CSPO cannot create a "good faith belief" by a defendant that a CSPO is no longer in effect and, although the trial court found neither defendant's nor victim's versions of events credible, it found victim's son's and officers' testimony credible.

**Speedy trial.** State v. Mathias, 2021-Ohio-423 | 5th Appellate District | 2/16/21 In a conviction of felony drug offenses, defendant was not denied his right to a speedy trial under the facts, including his failure to timely comply with reciprocal discovery, R.C. 2945.72(D), and his filing of a motion to suppress, as well as his intervening actions delaying the proceedings on the motion to suppress, including the violation of his bond and the period of time that he was incarcerated on other charges.

**Plea.** State v. Elliott, 2021-Ohio-424 | 1st Appellate District | 2/17/21 In a conviction by plea of three drug-related offenses, plea was validly made where the trial court specifically informed defendant during the change of plea hearing that the court was not bound by the negotiated or "agreed" sentence that defendant made with the state and that the court was only accepting the plea agreement as containing a sentencing recommendation, not a stipulation, and provided defendant the opportunity to withdraw his guilty plea.

**Plea.** State v. Brooks, 2021-Ohio-425 | 1st Appellate District | 2/17/21 In a conviction by plea in two cases of felony drug and weapon offenses and imposition of concurrent and consecutive sentences totaling 60 months, plea was validly made where the defendant's claim that plea was invalid because his attorney and prosecutor assured him that his pleas would result in the imposition of a sentence of no greater than 48 months is based on information outside the record and cannot be considered in a direct appeal.

**Continuance.** State v. Blassingame, 2021-Ohio-426 | 1st Appellate District | 2/17/21 In a conviction by plea of disorderly conduct, denial of motion for continuance was not error where the defendant had received four prior continuances and, moreover, although the defendant requested a continuance to obtain additional discovery of officer's body-camera video, that video was no longer available, the request was made outside the retention period, and all discovery available had already been provided.

**Miranda.** State v. Moctezuma, 2021-Ohio-442 | 5th Appellate District | 2/17/21 In a conviction by plea of receiving stolen property, denial of motion to suppress was not error since defendant validly waived his Miranda rights because he was able to understand and speak English sufficiently to understand and waive his rights when speaking with the officer where officer read Miranda rights in English and provided a written copy in both English and Spanish, and defendant acknowledged he understood his Miranda rights by signing both the English and Spanish versions.

**Plea withdrawal.** State v. Darling, 2021-Ohio-440 | 8th Appellate District | 2/18/21 Following a 2016 conviction by plea of drug and related offenses that was affirmed, denial of 2019 motion to withdraw plea was not error since the trial court had no jurisdiction to consider the motion under Crim.R. 32.1 after a conviction had been affirmed on appeal, Special Prosecutors, and appeal is also barred by res judicata.

**Weapons offense.** State v. Maxey, 2021-Ohio-438 | 8th Appellate District | 2/18/21 Conviction of, inter alia, four counts of improperly discharging a firearm at or into a habitation was not supported by sufficient evidence of two of the counts since the state concedes

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only two habitations were involved, but evidence demonstrated that multiple apartments were in the building and that defendant knew that by shooting into the ceiling of the apartment that he was shooting into another apartment, warranting a conviction on two of the counts, R.C. 2901.22(B).

**Subpoena.** State v. Findler, 2021-Ohio-449 | 1st Appellate District | 2/19/21 In a bench conviction of speeding in violation of city code, the trial court did not commit reversible error by not holding an evidentiary hearing in granting state's motion to quash defendant's subpoena since any error was harmless where the record demonstrates subpoena had no merit and would have had no impact on the trial since defendant during trial cross-examined officer who arrested him, with officer negating any allegations of relying on social media to target defendant.

**Violating protection order.** State v. Almeyda, 2021-Ohio-451 | 2nd Appellate District | 2/19/21 Conviction of violation of a protection order, R.C. 2919.27(A) (1), met the sufficiency and weight of evidence standards where victim's testimony that defendant followed her in his car within 25 feet that was also supported by photos she took with her phone while she was driving since the jury did not lose its way in making its credibility determinations, and thus evidence was also sufficient to establish a violation of the protection order.

**Sexual offender classification.** State v. Emanuel, 2021-Ohio-448 | 1st Appellate District | 2/19/21 Following a 2017 conviction of sexual imposition that automatically classified appellant as a Tier I sexual offender, conviction was affirmed, with appellant completing probation in 2019, the trial court erred by denying motion to vacate/set aside tier classification and registration requirements since the court had not imposed the Tier I classification in the sentencing entry and appellant has served his sentence, including probation.

**Resisting arrest/Obstructing official business.** State v. Greenlee, 2021-Ohio-455 | 2nd Appellate District | 2/19/21 Convictions of resisting arrest, R.C. 2921.33(A), and obstructing official business, R.C. 2921.31(A), were supported by sufficient evidence where two officers testified that when

they attempted to execute an arrest warrant on defendant, he ran from them and then when he stopped, he refused officer's repeated orders to get on the ground, requiring officer to take defendant down by force.

**Sentencing.** State v. Haser, 2021-Ohio-460 | 5th Appellate District | 2/19/21 In a conviction by plea of aggravated burglary and domestic violence, the trial court did not commit plain error by not merging the offenses as allied offenses for sentencing where the state and the defendant stipulated in a plea agreement that the offenses did not merge, and at the plea hearing defendant also affirmed that he understood that he was pleading guilty to two separate counts; also, challenge to constitutionality to the Reagan Tokes Law, R.C. 2967.271, is not ripe for review.

**Self-defense.** State v. Frost, 2021-Ohio-457 | 6th Appellate District | 2/19/21 In a conviction of, inter alia, involuntary manslaughter, the trial court did not err in instructing jury on self-defense, R.C. 2901.05, concerning defendant's "duty to retreat" and "no duty to retreat," and the jury considered the evidence involving forensic and eyewitness testimony concerning defendant's anger, his brandishing of his handgun, the confrontational exchange outside appellant's apartment door between appellant and the victim, and the exchange of gunfire that appeared to flow from that confrontation.

**Search.** State v. Snell, 2021-Ohio-482 | 5th Appellate District | 2/19/21 Grant of motion to suppress in a drug and weapon prosecution was error since traffic stop by officer complied with traffic laws concerning a motorist making a turn at an intersection with a traffic signal, R.C. 4511.13(A)(1) and R.C. 4511.39(A).

**Motion in limine.** State v. Dudley, 2021-Ohio-478 | 5th Appellate District | 2/19/21 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(d), the trial court did not err in its rulings on state's motion in limine preventing defendant from attacking the reliability of a breathalyzer at trial and preventing her from calling her expert witness since defendant failed to object at trial, and defendant's no contest plea waived any claim of error concerning the adverse ruling on a motion in limine since the state's motion in limine was not the functional equivalent of a motion to suppress, French.

**Reopening.** State v. Kidd, 2021-Ohio-503 | 8th Appellate District | 2/19/21 Application to re-open appeal, App.R. 26(B), is denied since appellate counsel did not provide ineffective assistance by not challenging the trial court's issuance of a material witness warrant to the victim since appellant lacks standing to raise possible violations of the rights of a witness, and the warrant was not executed since the witness appeared without the warrant actually being served.

**Sealing.** State v. T.D., 2021-Ohio-513 | 6th Appellate District | 2/19/21 In an application to seal the record of a prior dismissed action after the trial court had granted an application to seal the record of conviction in the subsequent action for the same conduct, the trial court erred since the records in the prior case are "official records" of the subsequent case and may fairly be characterized as the same case at different stages of the proceedings, R.C. 2953.51(D).

**Reopening.** State v. Banks, 2021-Ohio-511 | 8th Appellate District | 2/19/21 Application to re-open, App.R. 26(B), is denied since appellant fails to demonstrate he was prejudiced by officer who obtained his cell phone when appellant was shot, claiming that he was a crime victim, not the perpetrator, since his cell phone was not the only evidence that established him as a gang member, the state also presented evidence from social media of his gang affiliation, his phone was not searched until a search warrant was obtained, and he subsequently consented to a search.

**Ineffective assistance.** State v. McElfresh, 2021-Ohio-480 | 5th Appellate District | 2/22/21 In a conviction by plea of drug offense, defense counsel provided ineffective assistance by failing to file an affidavit of indigency to support a request to have the mandatory fine waived and for failing to move to waive the fine since the record reflects a reasonable probability that the trial court would have found appellant indigent had his appointed trial counsel filed an affidavit of indigency before sentencing and would have waived the fine had trial counsel moved for a waiver.

**Competency.** State v. Stutler, 2021-Ohio-481 | 5th Appellate District | 2/22/21 Following a 2011 commitment of appellant to a maximum security mental health facility after he was found not guilty by reason of insanity of, inter alia, murder, denial of motion

to move appellant to a less restrictive level was not error since a trial court retains discretion to deny a request for increased privileges, even if the state's evidence in opposition to the requested modification does not rise to the level of clear and convincing evidence, where the trial court concluded the mental health professionals' opinions supporting the move did not establish a clear understanding of appellant's complete treatment plan.

**Right to counsel.** State v. Smith, 2021-Ohio-469 | 3rd Appellate District | 2/22/21 In a conviction by plea of aggravated robbery and weapons offenses, the trial court did not err by denying defendant's motion at the trial to discharge his second court-appointed trial counsel where defendant failed to show good cause since the record demonstrates defendant did not have a legitimate reason for his lack of confidence in his counsel, but rather there was a trial-strategy disagreement between defendant and counsel not amounting to "good cause" for substitution of counsel.

**Sentencing.** State v. Suder, 2021-Ohio-465 | 12th Appellate District | 2/22/21 In a conviction by plea of, inter alia, trafficking in persons and four counts of illegal use of a minor in nudity-oriented material and imposition of an indefinite prison term of a minimum of 74 years and a maximum of 86 years, the trial court did not err by not merging the offenses as allied offenses for sentencing since the conduct giving rise to the single trafficking in persons offense was completed prior to the conduct underlying any of the four illegal use of a minor offenses began, resulting in separate conduct for separate offenses; also, the Reagan Tokes Act is constitutional.

**Failure to comply.** State v. Zitney, 2021-Ohio-466 | 12th Appellate District | 2/22/21 Conviction of failure to comply with an order or signal of an officer, R.C. 2921.331(B) and (C)(5)(a)(ii) met the sufficiency and weight of evidence standards where appellant does not dispute that he failed to comply, and evidence supported a third-degree felony charge rather than a first-degree misdemeanor since appellant's conduct caused a substantial risk of serious physical harm to persons or property by his driving recklessly after refusing to comply with officer, resulting in officer's crash while pursuing defendant at a high rate of speed.

**Appeal.** State v. Kelly, 2021-Ohio-474 | 11th Appellate District | 2/22/21 In an appeal of conviction of assault and public indecency, the state's motion to dismiss is granted because judgment appealed from is not a final appealable order since only a single sentence was imposed after the trial court found the appellant guilty of two different crimes, and thus one of the offenses is left without a sentence, and the court of appeals is unable to determine to which offense the sentence applies.

**Plea.** State v. Myers, 2021-Ohio-475 | 11th Appellate District | 2/22/21 In a conviction by plea of, inter alia, involuntary manslaughter, plea was validly made where the trial court complied with Crim.R. 11(C)(2)(c) by expressly informing the defendant that he was waiving his right to a jury trial by telling him that the state "would have to prove the following elements by proof beyond a reasonable doubt to the unanimous satisfaction of a jury."

**Sentencing.** State v. Hearn, 2021-Ohio-594 | 4th Appellate District | 2/22/21 In a conviction by plea of two counts of felonious assault, R.C. 2903.11(A)(1), although the trial court erred by entering nunc pro tunc sentencing orders after appellant had filed his notice of appeal, corrections could be made on remand for re-sentencing; the trial court complied with Crim.R. 11 in advising appellant about the Reagan Tokes Law's sentencing implications, and challenge to the constitutionality of the Reagan Tokes Law's indefinite sentencing scheme is not ripe for review.

**Felony murder.** State v. Agee, 2021-Ohio-489 | 10th Appellate District | 2/23/21 Conviction of, inter alia, two counts of felony murder, R.C. 2903.02, met the sufficiency and weight of evidence standards where the evidence established that appellant aided and abetted the principals, whether gang members or simply associates of appellant, in committing felonious assault with a deadly weapon resulting in victims' deaths, the jury did not lose its way in making its credibility determinations, and there was no prohibited stacking of inferences from other inferences.

**Plea withdrawal.** State v. Mobley, 2021-Ohio-492 | 10th Appellate District | 2/23/21 Following a 2017 conviction by plea of, inter alia, aggravated arson that was not appealed, and denial of

a 2017 pro se Crim.R. 32.1 motion to withdraw plea that was affirmed, denial of successive pro se Crim.R. 32.1 motion was not error since barred by res judicata because all of appellant's asserted claims appear on the face of the record and could have been raised on direct appeal or in his prior Crim.R. 32.1 motion.

**Ineffective assistance.** State v. McKenzie, 2021-Ohio-536 | 4th Appellate District | 2/23/21 In a conviction of, inter alia, felonious assault, defense counsel did not provide ineffective assistance by not objecting to admission of a sanity report where it was defendant who moved the court for a sanity evaluation hoping to support his insanity defense, and defense counsel emphasized to jury that the doctor found defendant suffered a "severe mental disease," and counsel urged jury to reject doctor's opinion that an insanity defense was unwarranted, constituting strategic decisions consistent with the law.

**Search.** State v. Yoder, 2021-Ohio-496 | 9th Appellate District | 2/24/21 In a conviction by plea of drug possession and carrying a concealed weapon, denial of motion to suppress was not error since the officers had a reasonable, articulable suspicion of criminal activity that justified a Terry stop and subsequent pat-down of defendant where the stop occurred in a high crime area involving firearms, and defendant's appearance and behavior reasonably led officers to conclude he might be carrying a concealed firearm, including defendant's attempts to evade officers and his suspicious movements.

**Evidence.** State v. Romy, 2021-Ohio-501 | 5th Appellate District | 2/24/21 In a conviction of gross sexual imposition and endangering children, the trial court did not err by not permitting defendant to question minor victim concerning minor's reporting to a counselor that defendant's paramour engaged in conduct against another minor that defendant's paramour and defendant engaged in against him since the trial court ruled the alleged incident between defendant's paramour and the second child was not relevant to the issues because there was no testimony that defendant knew of that alleged conduct, Evid.R. 401 and 616(C).

**Post-conviction relief.** State v. Hunt, 2021-Ohio-528 | 5th Appellate District | 2/24/21 Following a conviction of child endangering that was affirmed, denial

of petition for post-conviction relief was error where the court failed to make findings of fact and conclusions of law required by R.C. 2953.21(H), and petition was timely filed when taking into consideration the governor's emergency order tolling statutes of limitations, time limitations and deadlines; remanded for the trial court to make findings of fact and conclusions of law.

**Post-conviction relief.** State v. Pan-  
ezich, 2021-Ohio-572 | 7th Appellate  
District | 2/24/21 Following a conviction by plea of, inter alia, aggravated theft that was affirmed, denial of successive petition for post-conviction relief was not error since untimely filed, R.C. 2953.23(A), and petitioner failed to make the showings for the filing of an untimely filed petition, R.C. 2953.23(A)(1)(a), regardless of the fact that petitioner had the same counsel throughout much of his case since petitioner admits in his affidavit that he had known of a prior more favorable plea offer.

**Post-conviction relief.** State v. Parker,  
2021-Ohio-509 | 8th Appellate District  
| 2/25/21 Following a 1996 conviction of aggravated murder and aggravated robbery that was affirmed following remand for nunc pro tunc sentencing entries, denial of motion to vacate nunc pro tunc entries, treated as a petition for post-conviction relief, was not error since res judicata bars review because appellant's challenges to the nunc pro tunc entries and their validity have previously been litigated and rejected by another court of appeals, and challenge to indictment could have been raised in appellant's direct appeal.

**Plea withdrawal.** State v. Lewis, 2021-  
Ohio-530 | 5th Appellate District | 2/25/21 In a conviction by plea of drug and related offenses, denial of pre-sentence motion to withdraw plea shortly before the trial was not error since appellant's claims that he has a defense to the charges are based on mere speculation where no testimony or evidence was presented to support his contention, the court substantially complied with Crim.R. 11(C)(2)(a) and (b) and strictly complied with Crim.R. 11(C)(2)(c), and record shows an extensive colloquy occurred.

**Search.** State v. Jackson, 2021-Ohio-  
517 | 1st Appellate District | 2/26/21 In a conviction of weapons offenses, denial of motion to suppress was not error since defendant failed to challenge the

legality of the traffic stop at trial, and an officer may order a motorist to exit a car properly stopped for a traffic violation, even without a suspicion of criminal activity, and the plain-view exception to the warrant requirement applied to marijuana seized in plain view on the car floor, justifying a warrantless search of car under the automobile exception to the warrant requirement.

**Sentencing.** State v. Keith, 2021-Ohio-  
518 | 2nd Appellate District | 2/26/21 In a conviction of felonious assault, the trial court erred by imposing a definite sentence of two years after finding sentencing requirements in the Reagan Tokes Act, R.C. 2967.271, unconstitutional as violating the separation of powers doctrine since this court of appeals has previously held that the Act does not violate the separation of powers doctrine or a defendant's right to procedural due process, Sinkhorn.

**Indictment.** State v. Pearson, 2021-  
Ohio-520 | 2nd Appellate District |  
2/26/21 In a conviction by plea of, inter alia, failure to appear, claim that indictment was defective by not including all essential elements of offense is without merit since appellant waived any alleged deficiency in the indictment by failing to object to the indictment and by pleading guilty and he failed to demonstrate plain error since the indictment provided sufficient notice of the "own recognizance" element, and thus the indictment correctly charged him with an existing offense under R.C. 2937.29 and 2937.99.

**Prosecutorial misconduct.** State v.  
Phifer, 2021-Ohio-521 | 2nd Appellate  
District | 2/26/21 In a conviction of aggravated trafficking in drugs, although prosecutor's comments in closing and rebuttal were clearly improper, inflammatory and mischaracterized the evidence presented at trial, in the absence of any objection during closing, the comments did not rise to plain error since the state presented ample evidence of guilt, and the statements during closing were not so inflammatory to demonstrate that the jury's findings were the product of passion and prejudice.

**Appeal.** State v. Mann, 2021-Ohio-  
554 | 5th Appellate District | 2/26/21 Following a 2000 conviction of domestic violence and denial of 2020 "Petition for Relief from Federal and State Firearms Disability," denial of subsequent "Motion for Relief from Judgment" under Civ.R.

60(B)(5) was not error since appellant's failure to file a timely appeal from the trial court's denial of his earlier "petition" cannot be revived by the filing of a Civ.R. 60(B) motion.

**Jury instructions.** State v. Radcliff,  
2021-Ohio-553 | 5th Appellate District |  
2/26/21 In a conviction of escape, R.C. 2921.34(A)(3), the trial court did not err by providing the jury a flight instruction where the trial court did not instruct the jury that flight was a fact, but allowed the jury to determine whether or not flight was motivated by consciousness of guilt and the jury could disregard it as being evidence towards anything at all, and there was evidence that appellant failed to report to his parole officer numerous times.

**Search.** State v. Turner, 2021-Ohio-541  
| 12th Appellate District | 3/1/21 Following the court of appeals' affirmance of an OVI conviction in which the trial court denied a motion to suppress based on a traffic stop for a marked lanes violation where defendant's vehicle's tires had touched, but did not cross, the fog line, that the Ohio Supreme Court on a motion to certify held that the court of appeals erred in its reasoning, but remanded to the court of appeals for a determination as to whether officer made a "reasonable mistake of law," the court of appeals holds the state waived that issue by failing to raise it in the trial court.

**Sentencing.** State v. Crawford, 2021-  
Ohio-547 | 3rd Appellate District | 3/1/21 In a conviction by plea of drug offenses and imposition of an indefinite prison sentence with a minimum term of nine years and a maximum term of thirteen-and one-half years, challenge to the constitutionality of the Reagan Tokes Act is without merit since issues raised are not ripe for review; also, the trial court erred by ordering defendant to pay restitution to a governmental entity that does not qualify as a victim, R.C. 2929.18(A)(1).

**Animal cruelty.** State v. Neanover,  
2021-Ohio-540 | 12th Appellate District  
| 3/1/21 In a conviction by plea of two counts of cruelty to a companion animal, denial of motion to suppress was not error since officer was able to view dog's condition through a gap in defendant's fence that was not created by the officer, and the dog's poor appearance to officer constituted an exigent circumstance permitting the warrantless seizure of the dog.

**Post-conviction relief.** State v. Scofield, 2021-Ohio-569 | 5th Appellate District | 3/1/21 Following a conviction by plea of improper handling of a firearm in a motor vehicle and denial of motion to suppress warrantless inventory search and vehicle impoundment after a traffic stop, denial of petition for post-conviction relief was not error even if police searched vehicle prior to a determination of whether arrest warrants for petitioner were valid since they had decided to arrest petitioner on other charges and weapons would have been inevitably discovered during impoundment and inventory.

**Evidence.** State v. Clark, 2021-Ohio-559 | 10th Appellate District | 3/2/21 In a conviction of theft and Medicaid fraud, admission of calendar on which daughter of individual receiving caregiver services from defendant's employer kept track of employees' time in providing services for her mother was not error where admitted to show discrepancies in the hours actually worked by caregiver's employees and the hours charged for services since the recording of information was in the course of a regularly conducted "calling of every kind," Evid.R. 803(6).

**Jail-time credit.** State v. Logan, 2021-Ohio-571 | 7th Appellate District | 3/2/21 Following a conviction by plea of aggravated assault, denial of subsequent motion for jail-time credit was not error since the proper vehicle for challenging legal errors in the imposition of jail-time credit is by way of a direct appeal from the sentencing entry and since appellant did not, he has waived issue, and also appellant is not entitled to jail-time credit since, while he was awaiting disposition of this case in the county jail, he was also serving a sentence for involuntary manslaughter in another county.

**Appeal.** State v. Brown, 2021-Ohio-573 | 7th Appellate District | 3/2/21 In a conviction of aggravated robbery and grant of motion for delayed appeal, claim that verdict form lacked any aggravating elements and did not list the degree of the offense and thus that appellant should have been convicted of fourth-degree aggravated burglary is without merit since issue could have been, but was not, raised in a direct appeal from conviction, and thus issue is barred by

res judicata; moreover, he was convicted of aggravated robbery, not aggravated burglary.

**Speedy trial.** State v. Muhammadel, 2021-Ohio-567 | 1st Appellate District | 3/3/21 In a conviction by plea of misdemeanor assault, denial of motion to dismiss for violation of U.S. and Ohio constitutional speedy trial rights was not error where the two-year delay between the filing of the assault complaint and defendant's arrest was not unreasonable in light of defendant's lack of an address, there is no showing of bad faith by police in its limited attempts to locate the defendant, and the defendant failed to show particularized prejudice by the delay.

**Post-conviction relief.** State v. Barner, 2021-Ohio-654 | 4th Appellate District | 3/3/21 Following a 2010 conviction of pornographic and sex offenses involving a minor, denial of 2019 petition for post-conviction relief was not error since claims concerning sentencing issues raised are voidable, not void, and barred as untimely filed since petitioner could have raised his challenges within the time period governing post-conviction petitions, and he failed to demonstrate the existence of facts necessary for the trial court to exercise jurisdiction over the merits of his untimely claims, R.C. 2953.23(A), and claims are also barred by res judicata, Harper.

**Sentencing.** State v. Wilburn, 2021-Ohio-578 | 8th Appellate District | 3/4/21 In a conviction by plea of burglary and aggravated assault, imposition of concurrent prison sentences for a minimum term of two years and a maximum term of three years was not error since the challenge to the Reagan Tokes Law is ripe for review, and it does not violate the constitutional guarantees of separation of powers and due process.

**Ineffective assistance.** State v. Morton, 2021-Ohio-581 | 8th Appellate District | 3/4/21 In a conviction of, inter alia, rape, defense counsel did not provide ineffective assistance since counsel zealously advocated on defendant's behalf and presented a reasonable defense of a consensual encounter with the victim, made numerous objections, many of which were sustained, and there was not a reasonable probability that but for counsel's errors the result of the proceeding would have been different.

**Suspension.** State v. Kincaid, 2021-Ohio-583 | 8th Appellate District | 3/4/21 Following a 2004 conviction of, inter alia, OVI and failure to comply, with imposition of a lifetime driver's license suspension, grant of 2019 motion for limited driving privileges pursuant to R.C. 4510.021(A) was error where the court failed to consider whether it had the statutory authority under R.C. 2921.331(E) to suspend the class two suspension after three years; the court also erred in granting driving privileges without proof of financial responsibility and in not specifying the time and purposes of driving privileges, R.C. 4510.021(A) and (E).

**Speedy trial.** Cleveland v. Beach, 2021-Ohio-577 | 8th Appellate District | 3/4/21 In a conviction of first-degree misdemeanor OVI and minor misdemeanor driving in marked lanes, the trial court erred by denying motion to dismiss for a speedy trial violation, R.C. 2945.71, since the issuance of a *capias* did not reset the speedy trial right time period because defendant was not rearrested and a new pretrial was rescheduled.

**Evidence.** Cleveland v. Taylor, 2021-Ohio-584 | 8th Appellate District | 3/4/21 In a conviction of endangering children and criminal damaging, the trial court did not violate defendant's right to confrontation by allowing victim's mother to testify about victim's out of court statements since victim's statement, made to his mother in her home following a traumatic event, was not made under circumstances that would lead an objective witness to reasonably believe that the statement would be available for use at a later trial, and victim's statements were admissible as an excited utterance.

**Search.** State v. Maddox, 2021-Ohio-586 | 10th Appellate District | 3/4/21 In a conviction by plea of drug and weapon offenses, denial of motion to suppress was not error where officers had probable cause to search defendant's vehicle following a legal traffic stop, and defendant voluntarily surrendered the evidence of criminal activity without the need for a search of his person when officers stated that they noticed a raw marijuana odor coming from vehicle, and a subsequent warrantless search of vehicle was justified under the automobile exception to the exclusionary rule.

**Appeal.** State v. White, 2021-Ohio-588 | 10th Appellate District | 3/4/21 Following a 2006 conviction of, inter alia, murder that was reversed for re-sentencing, grant of 2019 motion to add the subsection of the statute that defendant was convicted of violating, treated as a correction of a clerical mistake, was not a final order that appellant could appeal from since it relates back to the sentencing entry filed in 2006.

**Ineffective assistance.** State v. Allen, 2021-Ohio-648 | 4th Appellate District | 3/4/21 In a conviction by plea of, inter alia, grand theft and aggravated robbery, defense counsel did not provide ineffective assistance during the change of plea and sentencing hearing where, even if counsel did not anticipate the lengthy sentence that was imposed, an attorney's advice to accept a plea deal is not per se ineffective assistance of counsel, and judge informed appellant at the plea hearing of the maximum sentence that he could receive on each count.

**Speedy trial.** State v. Belville, 2021-Ohio-820 | 4th Appellate District | 3/4/21 In a felony drug conviction, defendant was not denied his statutory speedy trial rights under R.C. 2945.71 since time was tolled by defendant's discovery request and defendant's delay in providing reciprocal discovery, R.C. 2945.71(D) and (E), and discovery was ongoing due to the state's review and updates involving video footage seized by the state from defendant's residence and preparation for defendant, and there is no evidence of dilatory or bad faith action by the state in failing to provide video discovery sooner.

**Post-conviction relief.** State v. Ash, 2021-Ohio-602 | 2nd Appellate District | 3/5/21 Following a conviction by plea of a drug offense that was not appealed, denial of petition for post-conviction relief without a hearing was not error since claim of ineffective assistance of counsel in not pursuing a motion to dismiss would have been futile because arresting officer was relying on the request of another officer to make a traffic stop who observed defendant commit a traffic violation, and defense counsel's decision not to pursue a motion to suppress was a tactical decision not to pursue a likely futile act.

**Impaired driving.** State v. Mundy, 2021-Ohio-605 | 2nd Appellate District | 3/5/21 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(a) and (A)(2), denial of motion to suppress was not error where officer had a lawful basis to make a traffic stop since officer's unaided visual estimation that defendant was speeding was a lawful basis for the stop because officer was trained and experienced in making a visual estimation of speed, R.C. 4511.091(C)(1) distinguished.

**Post-conviction relief.** State v. Wright, 2021-Ohio-610 | 2nd Appellate District | 3/5/21 Following a 1999 conviction of, inter alia, four counts of rape that was affirmed, denial of 2020 motion for re-sentencing, treated as an untimely petition for post-conviction relief, was not error since the facts concerning all of appellant's claims pertaining to his indictment, the jury forms and sentencing issues would have been known at the time of his trial and could have been raised in his direct appeal, and thus claims are barred by res judicata.

**Tampering with records.** State v. Brown, 2021-Ohio-597 | 1st Appellate District | 3/5/21 Conviction of tampering with records, R.C. 2913.42(A)(1), was not supported by sufficient evidence where, even though defendant made false statements concerning her adverse possession and ownership of another's property in a civil action for quiet title, the statements were privileged since the defamatory statements were material and relevant to the issues in that action.

**Traffic violation.** State v. Frye, 2021-Ohio-598 | 1st Appellate District | 3/5/21 In a bench conviction of, inter alia, three minor misdemeanor traffic-related offenses, conviction of improper change of course was not supported by sufficient evidence since the ordinance did not prohibit a driver from turning into the outside right lane, instead of the inside left lane, of a two lane roadway in the vehicle's direction of travel, but only requires a driver to "proceed through the intersection and across the center line before turning left," regardless of the lane turned onto in the direction in which the vehicle is traveling.

**Unauthorized use of motor vehicle.** State v. Harden, 2021-Ohio-600 | 1st Appellate District | 3/5/21 Conviction of unauthorized use of a motor vehicle, R.C. 2913.03(A), met the sufficiency and weight of evidence standards where sufficient evidence was presented that

defendant used another's car after permission to do so had terminated since car owner had given permission to a defendant-co-employee to use owner's vehicle only during a lunch break, but defendant used vehicle for days after permission had terminated, and trier of fact did not lose its way in making its credibility determinations.

**Retaliation.** State v. Ward, 2021-Ohio-616 | 6th Appellate District | 3/5/21 Conviction of two counts of retaliation, R.C. 2921.05(A), arising out of appellant-inmate's threats to a prosecuting attorney in two letters, met the sufficiency and weight of evidence standards where appellant's name and inmate number were included on the envelopes and the letters contained information specific to appellant about his conviction and subsequent investigation of him by authorities following the first letter that only he would have known about.

**Jury.** State v. Oliver, 2021-Ohio-606 | 2nd Appellate District | 3/5/21 In a conviction of two counts of rape, the trial court did not commit error in the jury selection process where appellant exhausted his peremptory challenges before a retired police officer became a member of the jury pool, and appellant was then limited to a challenge for cause since he had used his peremptory challenges since the defense counsel acknowledged there was no basis to challenge juror for cause because the juror affirmed that he could be fair and impartial.

**Evidence.** State v. Pooler, 2021-Ohio-607 | 2nd Appellate District | 3/5/21 In state's appeal in acquittal in a rape prosecution, the trial court did not err by allowing defense counsel to recall and question the complaining witness after defendant testified that witness had demanded fifty dollars for sexual activity since the court could have reasonably concluded that probative value of witness' admission to engaging in prostitution outweighed any interest the state had in its exclusion, and the court could have reasonably concluded the rape shield law would have hindered the truth-finding process, Gardner.

**Ineffective assistance.** State v. Windon, 2021-Ohio-617 | 6th Appellate District | 3/5/21 In a conviction by plea of a drug offense, trial counsel was ineffective for failing to file an affidavit of indigency prior to sentencing to avoid the mandatory fine required by

R.C. 2925.11(E)(1)(a) and 2929.18(B)(1) since the record establishes a reasonable probability that defendant would be found indigent where the trial court had indicated its willingness to waive the fine on account of indigency, Gilmer.

**Jury instruction.** State v. Portis, 2021-Ohio-608 | 2nd Appellate District | 3/5/21 In a conviction of felonious assault and aggravated robbery, the trial court did not err in instructing jury on complicity, R.C. 2923.03(F), even if the charging instrument did not specifically contain that charge since the victim's testimony allowed for the possibility that a person other than defendant was involved in the attack against him, even if the victim did not observe the other person, warranting the complicity instruction.

**Sentencing.** State v. Doughty, 2021-Ohio-651 | 5th Appellate District | 3/5/21 In a conviction of, inter alia, domestic violence and felonious assault, the trial court did not err by not merging the sentences as allied offenses for sentencing since appellant's conduct constituted separate offenses against a single victim on separate days, and the resulting harm from each offense is separate and identifiable from the harm of the other offenses; also, challenge to the constitutionality of the Regan Tokes Act providing hybrid indefinite prison terms is not ripe for review since appellant has not yet been subject to the provisions he challenges.

**Search.** State v. Kimes, 2021-Ohio-650 | 5th Appellate District | 3/5/21 In a conviction of pandering sexually-oriented material involving a minor, R.C. 2907.322(A)(1), denial of motion to suppress was not error where officer found a cell phone on the ground beside a vehicle that he had been pursuing, officer could examine phone's content to determine the owner, and officer's activation of the home button with the intent to discover the rightful owner of the phone was not unreasonable and did not violate defendant's expectation of privacy.

**Reopening.** State v. Townsend, 2021-Ohio-696 | 8th Appellate District | 3/5/21 Pro se application to re-open appeal, App.R. 26(B), is denied; issues discussed: speedy trial, Confrontation Clause, sufficiency of evidence, severance of charges, discovery, motion to suppress, DNA evidence and compulsory process.

**Drug offense.** State v. Double, 2021-Ohio-632 | 9th Appellate District | 3/8/21 Conviction of operating a vehicle with a hidden compartment used to transport a controlled substance, R.C. 2923.241(C), was error since the officer found contraband within the vehicle's original factory equipment that had not been modified or altered in any way, and thus the vehicle did not contain a hidden compartment; however, conviction of hashish possession, R.C. 2925.11(A), (C)(7)(c), met the sufficiency and weight of evidence standards where state's expert testified that the substance met the standards of hashish according to the law in effect at the time of trial.

**Post-conviction relief.** State v. Myers, 2021-Ohio-631 | 12th Appellate District | 3/8/21 Following a conviction of capital murder, the trial court in denying petition for post-conviction relief without a hearing concerning petitioner's claim of ineffective assistance of counsel for failing to present expert testimony on adolescent brain development and petitioner's mental health issues at the penalty phase of the trial; court also erred in finding that petitioner did not establish good cause to conduct discovery regarding this issue; remanded for evidentiary hearing.

**Post-conviction relief.** State v. Gaddy, 2021-Ohio-637 | 3rd Appellate District | 3/8/21 Following a conviction by plea of, inter alia, aggravated burglary after denial of motion to withdraw plea for ineffective assistance of counsel that was affirmed, denial of petition for post-conviction relief was not error since the same claim of ineffective assistance of trial counsel was raised on direct appeal and, since claim was rejected, the issue is barred by res judicata.

**Voluntary manslaughter.** State v. Richcreek, 2021-Ohio-636 | 3rd Appellate District | 3/8/21 In a conviction of voluntary manslaughter, R.C. 2903.03(A), imposition of an indefinite prison term of a minimum of eight years and a maximum of 12 years was not error where sentence was within the statutory range, the trial court stated that it considered the sentencing requirements and factors in R.C. 2929.11 and 2929.12, and appellate review under R.C. 2953.08(G)(2) does not provide a basis for an appellate court to modify or vacate a sentence based on its view that the sentence is not supported by the record under R.C. 2929.11 and 2929.12, Jones.

**Hearsay.** State v. Heineman, 2021-Ohio-643 | 3rd Appellate District | 3/8/21 In a conviction of violation of a civil protection order, R.C. 2919.27, the trial court did not err by permitting the state to replay an officer's body cam video during the state's rebuttal since the trial court found that defendant had challenged credibility of the state's witnesses and allowed the state to use the prior consistent statements to rehabilitate the state's witnesses, Evid.R. 801(D)(1).

**Aggravated murder.** State v. Williams, 2021-Ohio-1285 | 7th Appellate District | 3/8/21 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(A), the trial court did not err by not instructing the jury on voluntary manslaughter or reckless homicide where the evidence presented at trial did not support instructions on those offenses, and the state provided sufficient evidence that defendant acted with prior calculation and design.

**Sexual offender registration.** State v. Black, 2021-Ohio-676 | 10th Appellate District | 3/9/21 In a conviction of rape and kidnapping, the trial court provided defendant the notifications regarding his registration duties as a Tier III sex offender where the court complied with R.C. 2950.03(A) and (B)(1) at the sentencing hearing by engaging in a colloquy with defendant concerning his responsibilities under the law that defendant acknowledged he understood.

**Escape.** State v. Wilcox, 2021-Ohio-677 | 10th Appellate District | 3/9/21 In an appeal by state of grant of motion to dismiss indictment in a prosecution of escape, R.C. 2921.34, arising out of appellant's failure to comply with post-release control (PRC) in another case, the trial court erred in holding PRC was void and that its violation could not serve as the basis of an escape prosecution since under Harper any error in the imposition of PRC is only voidable, not void, and since the PRC was not challenged on appeal, res judicata applies, and the provision cannot be challenged in another proceeding.

**Domestic violence/Endangering children.** State v. Miller, 2021-Ohio-684 | 5th Appellate District | 3/9/21 Conviction of domestic violence, R.C. 2919.25(A) and (D)(4) and endangering children, R.C. 2919.22(A) and (E)(2)(b), was not against the weight of evidence that defendant had the requisite mens rea where he admitted to placing his four

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year-old son's hand against the viewing window on a free-standing heating stove and, although defendant claimed he was playing with his son and unaware that the stove was either on or had been on prior to the incident, the jury did not lose its way in making its credibility determinations.

**Appeal.** State v. Gonzales, 2021-Ohio-680 | 1st Appellate District | 3/10/21 Following 2001 convictions of drug offenses that was affirmed and denial of successive petitions for post-conviction relief, denial of "Motion to Vacate Sentence," seeking correction of post-release control, and "Motion to Vacate Convictions for Lack of Final Appealable Orders," alleging failure to comply with Crim.R. 32(C), is affirmed as a dismissal since the trial court had no jurisdiction to afford relief requested in the motions because the judgments were not void, Harper, and the trial court sufficiently complied with the substantive requirements of Crim.R. 32(C).

**Dismissal.** State v. Roberts, 2021-Ohio-68 | 1st Appellate District | 3/10/21 In an appeal by the state of dismissal of domestic relations prosecution, R.C. 2919.25(C), after the state's only witness abruptly left the courtroom after testifying as a state witness, but prior to cross-examination by defendant, judgment is affirmed since the state had no other evidence to present and the confrontation clause bars consideration of the testimony of a witness who testified as a state witness, but who was unavailable to be cross-examined.

**Speedy trial.** State v. Howerton, 2021-Ohio-913 | 4th Appellate District | 3/10/21 In an OVI conviction by plea, denial of motion to dismiss for speedy trial violation was error where 84-day delay in the pretrial date was not requested by defendant, but scheduled by the trial court to have the urinalysis test results completed and returned from the laboratory, and there was no written speedy trial waiver, explicit oral speedy trial waiver or any motion or request attributable to the defendant.

**Habeas corpus.** Farley v. Wainwright, 2021-Ohio-670 | Supreme Court of Ohio | 3/11/21 In inmate's pro se habeas corpus action alleging that he is entitled to immediate release from prison because respondents failed to update their records after he was re-sentenced in 2000, his dismissal was

not error since relator is serving a valid life sentence and any alleged mistake in computation of his good time credit concerning eligibility for parole is not tantamount to a legal right to release from prison.

**Sentencing.** State v. Cochran, 2021-Ohio-692 | 8th Appellate District | 3/11/21 Following a 2006 conviction by plea of aggravated murder that was not timely appealed, denial of 2019 motion to vacate a void sentence was not error where claim that the court imposed a prison sentence that was contrary to law under R.C. 2929.02(B) is without merit since the court had subject-matter and personal jurisdiction to sentence the appellant, and thus any error resulting from wording the sentence differently than mandated by the sentencing statute rendered the sentence voidable, challengeable only on direct appeal, Harper.

**Appeal.** State v. Chislon, 2021-Ohio-697 | 8th Appellate District | 3/11/21 In a conviction by plea of various offenses relating to a fire that defendant started in his apartment, appeal is dismissed where the trial court committed plain error in its sentencing journal entries since what occurred in open court at the plea hearing is not reflected in any of the trial court's journal entries, and the nunc pro tunc orders by the trial court were not appropriate to remedy the issue; remanded for further proceedings.

**Indictment.** State v. Wisniewski, 2021-Ohio-699 | 8th Appellate District | 3/11/21 In a bench conviction of defendant of three theft-related offenses of an elderly male victim, challenge to indictments is without merit since the indictments provided notice to defendant of the charges against her and the evidence at trial supported charges that she was convicted of as set forth in the respective indictments, including credit card statements showing purchases of items for numerous female-oriented items that were paid for through the victim's bank accounts.

**Post-conviction relief.** State v. Jordan, 2021-Ohio-701 | 8th Appellate District | 3/11/21 Following a 2017 conviction of, inter alia, rape that was affirmed, denial of petition for post-conviction relief was not error where the appellant presents no evidence to support his claim that in making its findings of fact and conclusions of law, the trial court had ex parte communications with the

prosecutor merely because the court adopted the state's filing within two days of its submission, and appellant did not file any findings or conclusions, although he had every opportunity to do so.

**Mandamus.** State ex rel. Sands v. Coulson, 2021-Ohio-671 | Supreme Court of Ohio | 3/11/21 In inmate's pro se mandamus action to compel county prosecutor "to dismiss the judgment of conviction[s]" against the relator based on alleged perjured testimony of a key witness in his conviction in the underlying criminal action, the court of appeals did not err in granting respondent's Civ. R. 12(B)(6) motion to dismiss since a prosecutor has no authority to unilaterally vacate a conviction.

**Double jeopardy.** State v. Body, 2021-Ohio-703 | 8th Appellate District | 3/11/21 In a bench conviction of having weapons offenses after appellant was re-indicted following dismissal of prior prosecution for the offenses, appellant's double jeopardy claim is without merit since he never moved the trial court to dismiss the second indictment based on double jeopardy and failed to raise a plain error claim on appeal.

**Judicial release.** State v. Williams, 2021-Ohio-704 | 8th Appellate District | 3/11/21 Following a 2011 conviction of, inter alia, two counts of first-degree felony aggravated robbery, the 2019 grant of motion for judicial release was error since appellee's sentence was imposed for felonies of the first degree, and appellee's mandatory sentence precludes him from being an "eligible offender," R.C. 2929.20(A)(1) (a), for judicial release pursuant to R.C. 2929.13(F)(6).

**Evidence.** State v. Holland, 2021-Ohio-705 | 8th Appellate District | 3/11/21 In a conviction of, inter alia, murder, R.C. 2903.02(B), admission of investigating officer's testimony was not error since it was admissible as lay testimony pursuant to Evid.R. 701 to clarify what the testimony of the state's experts, as well as officer's own investigation, demonstrated, namely that defendant's DNA was on a gun that was found at another location that matched a spent casing found at the scene of the shooting.

**Speedy trial.** State v. Boyce, 2021-Ohio-712 | 10th Appellate District | 3/11/21 In a conviction of second-degree felony burglary, denial of motion to



dismiss on speedy trial grounds was not error since fewer than 270 days elapsed on appellant's speedy trial clock under R.C. 2945.71 in view of tolling events prior to his imprisonment at another county's correctional institution, and appellant failed to invoke the 180-day speedy trial period in R.C. 2941.401 since he did not serve the required notice while at that correctional institution.

**Ineffective assistance.** State v. Rhinehart, 2021-Ohio-708 | 5th Appellate District | 3/11/21 In a conviction by plea of felonious assault, claim that appellant received ineffective assistance of trial counsel by not requesting waiver of court costs is without merit since appellant cannot demonstrate prejudice even if he is indigent because the record supports that the trial court would have overruled a motion to waive court costs because a defendant's present or future ability to pay court costs is not a necessary consideration when determining whether to waive costs, Taylor. v

**Jail-time credit.** State v. Jenkins, 2021-Ohio-745 | 5th Appellate District | 3/11/21 Following a conviction by plea of aggravated assault and having weapons while under disability, denial of pro se motion for reconsideration of a motion for jail time credit was not error where appellant was serving a prison term in another county on an unrelated matter during the pendency of the instant case, and thus he was not entitled to double jail-time credit.

**Impaired driving.** State v. Faulkner, 2021-Ohio-733 | 2nd Appellate District | 3/12/21 In a conviction by plea of OVI, R.C. 4511.19(A)(1)(a), denial of motion to suppress the results of defendant's urine test was not error where officer substantially complied with the labeling requirements of Ohio Adm. Code 3701-53-05(E) by placing a seal on the container containing the urine sample and writing on seal his name, defendant's name, and date and time of collection, and Code expressly provides for the information to be written on "a label," and the suspect is not required to initial or sign the label or the container.

**Jury.** State v. Freeman, 2021-Ohio-734 | 2nd Appellate District | 3/12/21 In a conviction of rape, R.C. 2907.02(A)(2), the trial court did not err by permitting jurors aged 65 or older with COVID-19 concerns to be excused from jury pool where defendant's challenge to the jury

pool was not timely made, and nothing in the record demonstrates that older residents who have COVID-19 concerns are distinctive or that there is prejudice toward them, R.C. 2313.16 and Crim.R. 24.

**Plea.** State v. Stumph, 2021-Ohio-723 | 1st Appellate District | 3/12/21 In a conviction by plea of aggravated murder, R.C. 2903.01(B), although the trial court conflated the concepts of parole and post-release control during the plea colloquy when explaining the potential maximum sentence, the court partially complied with Crim.R. 11 and the appellant does not demonstrate that he was prejudiced since the record contains no evidence that the court's references to post-release control induced the plea.

**Evidence.** State v. McDaniel, 2021-Ohio-724 | 1st Appellate District | 3/12/21 In a conviction of voyeurism, R.C. 2907.08(B), although admission of victim's testimony on cross-examination of defendant's prior convictions of public indecency was invited error of impermissible Evid.R. 404(B) character evidence, admission of certified copies of defendant's convictions of public indecency was not invited error but, in view of the evidence presented, any error was harmless.

**Post-conviction relief.** State v. DeVaughns, 2021-Ohio-729 | 2nd Appellate District | 3/12/21 Following a 2006 conviction of, inter alia, felonious assault that was affirmed on re-sentencing, denial of the 2019 petition for post-conviction relief was not error since appellant raised or could have raised his claim of ineffective assistance of counsel in his direct appeal from re-sentencing, and thus his claim on appeal is barred by res judicata.

**Violent offender database.** State v. Misch, 2021-Ohio-756 | 6th Appellate District | 3/12/21 Following a 1993 conviction of aggravated murder and aggravated robbery that was affirmed and 2020 release from prison, denial of motion to be excused from duties to report as a violent offender under Sierah's Law was not error since the violent offender database is remedial in nature and thus constitutional, and the trial court did not err in its determination that defendant did not overcome the presumptive duty of enrollment in the database, even though he was not the principal offender.

**Sentencing.** State v. Acosta, 2021-Ohio-757 | 6th Appellate District | 3/12/21 In an appeal of consolidated case, conviction by plea to multiple drug offenses, in which appellant was sentenced pursuant to the Reagan Tokes Act, R.C. 2967.271, judgment is affirmed since appellant did not challenge the constitutionality of the Act in the trial court and does not argue plain error on appeal and, moreover, issue is not ripe for review since appellant's imprisonment term has not yet been extended by the Ohio Department of Corrections.

**Complicity to commit abduction.** State v. Stein, 2021-Ohio-761 | 6th Appellate District | 3/12/21 Conviction of complicity to commit abduction with a firearm specification met the sufficiency and weight of evidence standards where surveillance video, phone calls between defendant and others involved in the abduction and testimony established that appellant aided and abetted in victim's abduction, and conviction of firearm specification was warranted since one of defendant's accomplices had a firearm during encounter with victim, and the jury did not lose its way in making its credibility determinations.

**Post-conviction relief.** State v. Hart, 2021-Ohio-767 | 6th Appellate District | 3/12/21 Following a conviction by plea of four counts of robbery, R.C. 2911.02, and subsequent grant and violation of judicial release and imposition of prison sentence of 12 years that was affirmed on appeal, denial of petition for post-conviction relief was not error since challenge to sentence is barred by res judicata where it was raised and rejected in appellant's direct appeal, and claim of ineffective assistance of counsel is barred since appellant failed to present any evidence dehors the record to support his claim.

**Grand theft of motor vehicle.** State v. Drane, 2021-Ohio-730 | 2nd Appellate District | 3/12/21 Conviction of, inter alia, grand theft of a motor vehicle met the sufficiency and weight of evidence standards based on victims' testimony, other eyewitness testimony and expert testimony, in addition to evidence of complicity, and the jury did not lose its way in making its credibility determinations.

**Discovery.** State v. Dugas, 2021-Ohio-731 | 2nd Appellate District | 3/12/21 In a conviction by guilty plea to aggravated robbery, challenge to the trial court's alleged failure to rule on discovery motions or to otherwise address discovery issues is without merit since a guilty plea waives all error for purposes of appeal except as related to the plea.

**Post-conviction relief.** State v. Grieco, 2021-Ohio-735 | 2nd Appellate District | 3/12/21 Following a conviction by guilty plea of domestic violence and involuntary manslaughter, dismissal of pro se petition for post-conviction relief without a hearing was not error where appellant failed to submit evidentiary documents containing sufficient operative facts to demonstrate substantive grounds for relief that merit a hearing, R.C. 2953.21, and because claims raised or that could have been raised at the trial or on appeal, claims are barred by res judicata.

**Search.** State v. Brown, 2021-Ohio-753 | 6th Appellate District | 3/12/21 In a conviction by plea of improper handling of firearms in a motor vehicle, R.C. 2923.16(B), arising out of a traffic stop, denial of motion to suppress was not error where trooper had probable cause to stop defendant for speeding, and odor and sight of marijuana in truck cab provided trooper with reasonable and articulable suspicion of criminal activity, trooper testified of his specialized training in recognition and detection of marijuana, and trooper was justified in searching the entire truck cab.

**Ineffective assistance.** State v. Bard, 2021-Ohio-742 | 5th Appellate District | 3/12/21 In a conviction of drug offense, defense counsel did not provide ineffective assistance by not striking a juror as biased since appellant failed to demonstrate that juror was actually biased where, although juror wore a sweatshirt expressing support for police, he stated he had been charged with disorderly conduct while intoxicated, that he bore no ill will toward the state or defendant, and that he could be fair and impartial in this case.

**Receiving stolen property.** State v. Dean, 2021-Ohio-766 | 5th Appellate District | 3/12/21 Conviction of receiving stolen property, R.C. 2913.51, met the sufficiency and weight of evidence standards where there was evidence presented that defendant entered a

stolen van within minutes of the time of the theft and two days later he, as the driver of, or the passenger in, the stolen van traveled to a store in another city, demonstrating the exercise of dominion over the stolen vehicle.

**Evidence.** State v. Marshall, 2021-Ohio-816 | 1st Appellate District | 3/12/21 In a conviction of, inter alia, drug offenses, failure of the state to timely provide defendant the officer's interview notes of defendant did not violate the Brady rule since alleged exculpatory information was provided to defense on the day trial was scheduled, and there were other remedies the defense had available to make use of that information; although the state violated Crim.R. 16, defendant did not claim that state's discovery violation was intentional, and it was not prejudicial since defense counsel was able to raise the issue on cross-examination of the officers.

**Ineffective assistance.** State v. Runk, 2021-Ohio-777 | 9th Appellate District | 3/15/21 In a conviction of rape of a substantially impaired person, trial counsel did not provide ineffective assistance by not calling defendant's wife as a witness since calling a witness is a matter of trial strategy, the decision of counsel is not reflected in the record, and there is no evidence in the record demonstrating that his wife was willing to testify, what her testimony would have been or whether it would have aided the defense.

**Hearsay.** State v. Holdren, 2021-Ohio-810 | 4th Appellate District | 3/15/21 In a conviction of aggravated trafficking in drugs, the trial court did not commit plain error by not excluding as hearsay and a violation of the Confrontation Clause a co-defendant's testimony of statements defendant made at a traffic stop since defendant's statements were not hearsay because he is a party-opponent, Evid.R. 801(D)(2)(a), and since the testimony qualified as non-hearsay, it did not implicate the Confrontation Clause.

**Plea withdrawal.** State v. Denney, 2021-Ohio-798 | 5th Appellate District | 3/15/21 In a conviction by plea of burglary and grand theft of a motor vehicle, the trial court erred by denying pre-sentence Crim.R. 32.1 motion to withdraw plea since the adequacy of the Crim.R. 11 colloquy is, by itself, not a sufficient basis to deny withdrawal of a plea, the court failed to provide a

meaningful hearing on the motion by stating that it would deny the motion prior to defendant providing his reasons for his motion, nor did the state identify any prejudice it would incur.

**Ineffective assistance.** State v. Grimes, 2021-Ohio-799 | 5th Appellate District | 3/15/21 In a conviction of drug and OVI offenses, defendant's trial counsel did not provide ineffective assistance by not filing a motion to suppress since there was not a reasonable probability of success where officer approached defendant after observing his suspicious activity in a high crime area, defendant was sweating profusely and he had dilated eyes that officer testified was typical of someone under the influence of a stimulant, objects officer saw defendant throw on street were items typically used with drugs, and defendant's responses to why he was in area were not credible.

**Sentencing.** State v. Jackson, 2021-Ohio-778 | 12th Appellate District | 3/15/21 In a conviction by plea of felonious assault with a firearm specification, R.C. 2903.11(A)(1), and imposition of an indefinite prison term of six to nine years for felonious assault to run consecutive to a mandatory three-year prison term on the specification, judgment is affirmed since appellant fails to provide any argument demonstrating how the Reagan Tokes Law, R.C. 2967.271, violates his constitutional right to due process, and the act does not run afoul of an offender's due process rights.

**Ineffective assistance.** State v. Ford, 2021-Ohio-782 | 12th Appellate District | 3/15/21 In a conviction of felonious assault, R.C. 2903.11(A)(1), defense counsel did not provide ineffective assistance where counsel requested discovery of victim's medical records of her injuries, and counsel's decisions not to subpoena the medical professionals who treated victim, not to exercise peremptory challenges to two potential jurors, and not to ask victim certain questions on cross-examination were matters of trial strategy.

**Appeal.** State v. Cunningham, 2021-Ohio-794 | 11th Appellate District | 3/15/21 In an appeal by defendants of various rulings by the trial court concerning motions filed by defendants, appeal is dismissed for lack of jurisdiction where there are no judgment entries appealed from and thus no final appealable orders, R.C. 2505.02(B).

**Appeal.** State v. Cunningham, 2021-Ohio-795 | 11th Appellate District | 3/15/21 In an appeal by defendant of various rulings by the trial court concerning motions filed by defendant, appeal is dismissed for lack of jurisdiction where there are no judgment entries appealed from and thus no final appealable orders, R.C. 2505.02(B).

**Impaired driving.** State v. Sitko, 2021-Ohio-788 | 11th Appellate District | 3/15/21 Conviction of OVI, R.C. 4511.19(A)(1)(a), was supported by sufficient evidence where officers found defendant asleep and slumped over steering wheel with an open beer bottle in his hand, his car in drive, and the brake applied in the middle of a road since officers observed multiple signs he was under the influence prior to arrest, he refused to submit to field sobriety tests or to a breath sample, and evidence that he was later diagnosed with sleep apnea goes to the weight, not the sufficiency of the evidence.

**Hearsay.** State v. Daniels, 2021-Ohio-790 | 11th Appellate District | 3/15/21 In a conviction of reckless homicide, the trial court erred by permitting hearsay testimony by officer concerning a mixup of bullets in the coroner's office, resulting in officer testifying that a state ballistics investigator told him that he had been given the wrong bullet since there was a danger that the jury would misuse the challenged out-of-court statement for the truth of the matter asserted, but admission was harmless because the declarant ballistics investigator testified at the trial, and there was overwhelming evidence of appellant's guilt.

**Double jeopardy.** State v. Keim, 2021-Ohio-793 | 11th Appellate District | 3/15/21 Dismissal of prosecution of animal cruelty for lack of subject-matter jurisdiction and subsequent imposition of same charge and conviction in a county where the trial court did have jurisdiction did not violate double jeopardy because jeopardy did not attach in the prior proceeding since that court did not have jurisdiction.

**Habeas corpus.** State ex rel. Sanchez v. Wainwright, 2021-Ohio-747 | Supreme Court of Ohio | 3/16/21 In inmate's pro se habeas corpus action, dismissal of action by the court of appeals is affirmed since relator failed to comply with the mandatory filing requirement in R.C. 2969.25(A) to attach an affidavit of his prior civil actions or appeals to his petition.

**Mandamus.** State ex rel. Sands v. Kelly, 2021-Ohio-769 | Supreme Court of Ohio | 3/16/21 In inmate's pro se mandamus action to compel the county clerk of courts to provide him with a record related to his criminal case, a dismissal of action by the court of appeals is affirmed since relator failed to comply with the mandatory filing requirement in R.C. 2969.25(A)(1) to identify with particularity the nature of each case in his affidavit of his prior civil actions or appeals.

**Evidence.** State v. Marshall, 2021-Ohio-816 | 1st Appellate District | 3/17/21 In a conviction of, inter alia, drug offenses, failure of the state to timely provide defendant the officer's interview notes of defendant did not violate the Brady rule since alleged exculpatory information was provided to defense on the day trial was scheduled, and there were other remedies the defense had available to make use of that information; although the state violated Crim.R. 16, defendant did not claim that state's discovery violation was intentional, and it was not prejudicial since defense counsel was able to raise the issue on cross-examination of the officers.

**Evidence.** State v. Carpenter, 2021-Ohio-821 | 5th Appellate District | 3/17/21 In a conviction of felony drug offense, the trial court did not commit plain error by ruling that testimony of an informant of his pending misdemeanor drug paraphernalia charge was not admissible for impeachment purposes because the exclusion of that testimony did not affect appellant's substantial rights since informant was an admitted drug addict who knew appellant from jail and "the streets," Evid.R. 404(B) and Evid.R. 609.

**Post-conviction relief.** State v. Barnett, 2021-Ohio-822 | 5th Appellate District | 3/17/21 Following a 2009 conviction by plea of rape and aggravated robbery that was affirmed and denial of post-conviction proceedings, denial of 2020 petition to vacate or set aside judgment of conviction or sentence for the trial court's failure to properly impose consecutive sentences was not error since consideration of issue is barred by res judicata since issue had been raised in the direct appeal.

**Plea.** State v. Evans, 2021-Ohio-829 | 5th Appellate District | 3/17/21 In a conviction by plea of attempted theft, plea was validly made where the trial court complied with the Civ.R. 11(C) requirements, the record demonstrates that defendant did not make an Alford plea and he did not assert his claim of innocence until after the trial judge stated the sentence and, during the colloquy, the court informed defendant of the maximum possible prison term in addition to the possibility of serving any post-release control time consecutively to his sentence, and defendant stated that he understood.

**Reopening.** State v. Melendez, 2021-Ohio-840 | 8th Appellate District | 3/17/21 Pro se application to re-open appeal, App.R. 26(B), is denied since an application for reopening only applies to an appeal from "the judgment of a conviction and sentence," App.R. 26(B)(1), and appellant appealed from the denial of a motion to withdraw a guilty plea.

**Reopening.** State v. Jacinto, 2021-Ohio-855 | 8th Appellate District | 3/17/21 Application to re-open appeal, App.R. 26(B), is denied since application was untimely filed, and appellant failed to show good cause for the untimely filing, App.R. 26(B)(2)(b), and the deadline for filing an application to reopen appeal is not tolled by an App.R. 26(A) application for reconsideration.

**Habeas corpus.** State ex rel. Hunley v. Wainwright, 2021-Ohio-803 | Supreme Court of Ohio | 3/18/21 In inmate's pro se habeas corpus action, dismissal by the court of appeals is affirmed on other grounds since relator's firearm specifications to his offenses run consecutively to any other previously or subsequently imposed prison term or mandatory prison term previously or subsequently imposed upon the offender, R.C. 2929.14(C)(1)(a), and thus the specifications run consecutively to relator's 1989 and 1992 sentences and extend his release date into 2025.

**Post-conviction relief.** State v. Vinson, 2021-Ohio-836 | 10th Appellate District | 3/18/21 Following a 2008 conviction of felonious assault that was affirmed, denial of 2020 pro se petition for post-conviction relief was not error since it is a successive petition for post-conviction relief, and appellant failed to satisfy either of the R.C. 2953.23(A) exceptions for filing of an untimely petition for her

claim that her trial and appellate counsel provided ineffective assistance by not challenging a search warrant, and thus the trial court lacked jurisdiction to consider the petition, Jones.

**Plea withdrawal.** State v. Barnes, 2021-Ohio-842 | 8th Appellate District | 3/18/21

In a conviction by plea of involuntary manslaughter, R.C. 2903.04(B), denial of pre-sentence motion to withdraw plea was not error where appellant claimed defense counsel provided ineffective assistance in not obtaining an expert to determine which of shooters shot first and that counsel failed to challenge the "counsel only" designation of all the video and audio footage where the claims were not raised in the trial court at the hearing on the motion to withdraw, and his arguments were speculative.

**Sex offender registration.** State v. Gray, 2021-Ohio-844 | 8th Appellate District | 3/18/21

Following a 2008 conviction of sex offenses which classified appellant as a Tier III sex offender under the Adam Walsh Act that was affirmed, 2020 classification of appellant as a sexual predator under Megan's Law was not error where the state proved by clear and convincing evidence that the R.C. 2950.09(B) (3) factors that appellant was likely to re-offend in light of his sexual offender program social worker's testimony that appellant not have unsupervised contact with minors and that he had a tendency to downplay the offenses.

**Speedy trial.** Cleveland Hts. v. Coleman, 2021-Ohio-846 | 8th Appellate District | 3/18/21

In a conviction by plea of misdemeanor disorderly conduct, denial of motion to dismiss for speedy trial violation was not error where defendant failed to demonstrate that he was serving a "term of imprisonment," as that term is used in R.C. 2941.401, and thus his statutory rights were solely governed by R.C. 2945.71, et seq., and he fails to demonstrate any error under those statutes.

**Sentencing.** State v. Whitehead, 2021-Ohio-847 | 8th Appellate District | 3/18/21

In a conviction by plea of sex, child pornography and kidnapping offenses, the trial court erred by not merging the kidnapping counts and by imposing concurrent and consecutive prison sentences of a minimum of 36 years and a maximum of 41.5 years, where the court failed to consider allied offenses

issue on the kidnapping offenses and failed to correctly apply the Reagan Tokes Act in imposing the sentence; remanded for re-sentencing.

**Post-conviction relief.** State v. Crespo, 2021-Ohio-848 | 8th Appellate District | 3/18/21

Following a 2016 conviction by plea of, inter alia, drug offenses that was not appealed, denial of 2019 untimely petition for post-conviction relief and a Crim.R. 32.1 motion to withdraw plea was not error where the post-conviction petition was untimely filed and petitioner had knowledge of the claimed ground of an alleged defective search warrant supporting his claim of ineffective assistance by counsel not filing a motion to suppress.

**Post-conviction relief.** State v. Burton, 2021-Ohio-851 | 8th Appellate District | 3/18/21

Following a conviction of drug and firearm offenses that was affirmed, denial without a hearing of pro se petition for post-conviction relief was error where the record shows that a tow receipt of petitioner's vehicle that was not introduced at the trial and not provided to petitioner directly contradicts a later tow receipt that the state introduced at the trial, supporting petitioner's position that the state committed a Brady violation relevant to his petition, and a hearing should have been held; remanded for a hearing on the petition.

**Plea withdrawal.** State v. Hobbs, 2021-Ohio-852 | 8th Appellate District | 3/18/21

Following a 2012 conviction by plea of, inter alia, attempted felonious assault, denial of 2020 motion to withdraw plea that was used to enhance a federal sentence being served was not error since appellant's claim that he pled to a non-existent offense is barred by res judicata since the trial court had personal and subject-matter jurisdiction in the 2012 conviction, and thus judgment was only voidable, not void, since appellant could have challenged the conviction on direct appeal, but did not.

**New trial.** State v. Sutton, 2021-Ohio-854 | 8th Appellate District | 3/18/21

Following 2007 convictions of two defendants of, inter alia, four counts of attempted murder that was affirmed after re-sentencing, denial of 2019 motion for new trial was error since newly discovered eyewitness evidence from two officers present at the scene and who did not testify at the trial supports defendants' testimony that they did not

commit the offenses and conflicts with other officers' testimony at the trial, and the state's failure to provide that evidence was a Brady violation; case remanded for a new trial.

**Ineffective assistance.** State v. Harris, 2021-Ohio-856 | 8th Appellate District | 3/18/21

In a conviction of, inter alia, two counts of attempted murder, claim that defense counsel provided ineffective assistance by not filing a motion to suppress his identification by allegedly suggestive pretrial identification procedures is without merit where two officers identified defendant as the person that they were in pursuit of following a traffic violation, and thus the record demonstrates that a motion to suppress would not have been successful.

**Ineffective assistance.** State v. Reed, 2021-Ohio-858 | 5th Appellate District | 3/18/21

In a conviction of domestic violence and menacing by stalking, defense counsel did not provide ineffective assistance since admission of testimony of defendant's prior conduct in a 2012 conviction of disorderly conduct involving his then girlfriend and his history of violence with the victim were admissible for the menacing with stalking charge, treating physician's assistant's testimony was admissible, and victim's hearsay statements did not violate the Confrontation Clause since victim was available as a witness.

**Sentencing.** State v. Bothuel, 2021-Ohio-875 | 6th Appellate District | 3/19/21

In a conviction by plea of second-degree felony burglary and imposition of a definite prison term of a minimum of six years to a maximum of nine years pursuant to the Reagan Tokes Law, judgment is affirmed since challenge to the constitutionality of the Reagan Tokes Law is not yet ripe for review, Maddox; conflict on issue is certified to the Ohio Supreme Court.

**Identification.** State v. Dorsey, 2021-Ohio-878 | 6th Appellate District | 3/19/21

In a conviction of complicity to commit felonious assault, the trial court did not commit plain error by admitting shooting victim's identification of defendant at victim's trial deposition, who was unavailable to testify at the trial since the procedure was not unnecessarily suggestive where, although the prosecutor showed a photograph of defendant to the victim, the photograph was used to confirm the identity of a person the witness already knew

through Facebook, the defendant was not present at the trial deposition, and victim was thoroughly cross-examined.

**Traffic violation.** Moraine v. Green, 2021-Ohio-869 | 2nd Appellate District | 3/19/21 Bench conviction of municipal reckless operation of a vehicle was not against the weight of evidence where two witnesses testified that defendant and another person were speeding towards a stop sign after dropping off their children at a school and that defendant hit the rear of the other vehicle, and defendant, although denying that she was speeding, also testified that she hit the rear of the other car, and the physical facts rule did not apply under the facts.

**Sealing.** State v. Kirkland, 2021-Ohio-870 | 2nd Appellate District | 3/19/21 Denial of application to seal record of a 2006 conviction of felony attempted corrupting another with drugs was not an abuse of discretion where the trial court found in view of the ongoing drug and opioid epidemic in Ohio that the public interest in maintaining the records and making them available for legitimate purposes outweighed any privacy interest of the applicant and that his family, educational, and career success demonstrated that he had not been hampered by his criminal record.

**Evidence.** State v. Gardner, 2021-Ohio-868 | 2nd Appellate District | 3/19/21 In state's appeal of the grant of a motion to suppress in the acquittal of defendant in a drug prosecution, the trial court erred by instructing the jury based on non-compliance with R.C. 2933.83 since it did not apply where only one photo was shown by one officer to another officer who was an eyewitness to the alleged offense; since defendant was acquitted, double jeopardy precludes retrial.

**Ineffective assistance.** State v. Casler, 2021-Ohio-857 | 5th Appellate District | 3/19/21 In a 2020 conviction by plea of sexual battery of a minor, claim that defense counsel provided ineffective assistance by not filing a motion to dismiss based on the running of the statute of limitations is without merit since the offense occurred beginning in 1995 and, since the applicable statute of limitations had not run at the time it was amended to increase the time period for prosecution and the amendment was retroactive, there was no ineffective assistance of counsel.

**Plea withdrawal.** State v. Conley, 2021-Ohio-837 | 1st Appellate District | 3/19/21 In a conviction by plea of aggravated possession of drugs, R.C. 2925.11(A), denial of motion to withdraw plea on day of sentencing was not error where the trial court heard defendant's argument for withdrawing his plea and thus defendant had the required hearing, and defendant's reason that he did not believe judge would impose a prison term was a mere change of heart.

**Sealing/Protection order.** State v. Daly, 2021-Ohio-873 | 2nd Appellate District | 3/19/21 In a consolidated appeal by appellant who was the applicant in one action to seal records of convictions and the defendant in an action for a violation of a protection order, trial court's vacation of prior order to seal record is affirmed since order was entered without a hearing or giving the state an opportunity to object; the trial court's judgment is reversed and remanded in the violation of a protection order action since record is unclear whether complaint was properly signed and notarized.

**Jail-time credit.** State v. Henry, 2021-Ohio-888 | 5th Appellate District | 3/19/21 In a conviction by plea of drug offenses and imposition of consecutive prison sentences totaling 20 months, defendant was not entitled to additional jail-time credit for time that he spent in another county jail on a federal detainer since he was not confined in that county jail for a reason arising out of the offenses for which he was convicted and sentenced in the trial court, but for a violation arising out of a federal conviction, and his bond in the present case was set as a personal recognizance bond, R.C. 2967.191(A).

**Search.** State v. Bennett, 2021-Ohio-937 | 4th Appellate District | 3/19/21 In a conviction by plea of trafficking in cocaine, denial of motion to suppress was not error where trooper had reasonable, articulable suspicion to make a traffic stop for lack of a proper license plate, and trooper's detection of burnt marijuana odor emanating from the vehicle provided probable cause for a search of the vehicle's passenger compartment.

**Judicial release.** State v. Cruz, 2021-Ohio-947 | 8th Appellate District | 3/19/21 Following a 2017 conviction by plea of trafficking in drugs and imposition of an agreed eight-year mandatory prison sentence that was affirmed, appeal

of denial of 2020 motion for judicial release is dismissed since the denial of a motion for judicial release is not a final, appealable order.

**Sealing.** State v. Baston, 2021-Ohio-890 | 12th Appellate District | 3/22/21 Denial of application to seal the record of a dismissed 2006 first-degree misdemeanor offense was not error since applicant failed to appear at the hearing or meet his burden of presenting specific evidence, but presented only a general claim that sealing would benefit him for "employment, pardons, background-check errors, over-restrictive hiring rules and more," even though he was currently serving a 40-year prison term in another state, R.C. 2953.52.

**Violating protection order.** State v. Lay, 2021-Ohio-892 | 12th Appellate District | 3/22/21 Conviction of violation of ex parte domestic relations protection order, R.C. 2919.27(A)(1), was supported by sufficient evidence that defendant was served with notice of the order pursuant to a telephone call to him made by an officer, R.C. 2919.27(D), the same protection order was reissued pursuant to R.C. 3113.31(E)(3)(c), and defendant recklessly violated the terms of the order by contacting the protected party by a text.

**Jurisdiction.** Arnoff v. State, 2021-Ohio-883 | 12th Appellate District | 3/22/21 Court of appeals dismisses pro se writ of certiorari challenging relator's guilty plea since the Ohio Constitution has not granted jurisdiction to the Ohio courts of appeals to consider writs of certiorari and, since relator did not comply with any of the requirements to invoke appellate jurisdiction, the court cannot consider his arguments related to the validity of his guilty plea.

**Plea.** State v. Fritts, 2021-Ohio-895 | 3rd Appellate District | 3/22/21 In a conviction by plea of third-degree felony cocaine possession, plea was not validly made where the trial court failed to confirm that defendant understood he was waiving certain constitutional rights by pleading guilty as required by Crim.R. 11(C)(2)(c), Dangler, and his written waiver in the plea agreement is insufficient when the trial court completely omits an explanation of a constitutional right; remanded for further proceedings.

**Appeal.** State v. Baker, 2021-Ohio-906 | 11th Appellate District | 3/22/21 Pro se appeal for leave to file a delayed appeal pursuant to App.R. 5(A) is denied where appeal is untimely by over 13 months and appellant's signed plea states that his attorney explained his appeal rights, including that appeal be filed "within 30 days of the Court's entry of the judgment of my sentence" and appellant's claim that he had difficulty in filing his appeal due to the Covid-19 is without merit since the effects of the pandemic were not a factor until months after appellant's notice of appeal was due.

**Evidence.** State v. Neiss-Parsons, 2021-Ohio-897 | 11th Appellate District | 3/22/21 In a conviction of two counts of passing bad checks, R.C. 2913.11(B), the trial court did not err in admitting into evidence defendant's prior convictions for passing bad checks, forgery and theft where the court made particularized findings that the probative value of prior convictions substantially outweighed their prejudicial effect, and defendant's credibility was directly at issue since she and the victim were the key witnesses, Evid.R. 609(B).

**Prohibition.** State ex rel. Burkons v. Stupica, 2021-Ohio-901 | 11th Appellate District | 3/22/21 In relator's prohibition action seeking a writ of prohibition against the trial judge from continuing to adjudicate the criminal proceedings against him, writ is granted since relator has demonstrated that he is entitled to the requested extraordinary relief in the prohibition.

**Impaired driving.** State v. Engler, 2021-Ohio-902 | 11th Appellate District | 3/22/21 In a conviction by plea of aggravated vehicular homicide and OVI, denial of motion to suppress a breath test result was not error since the state substantially complied with the regulations governing the Intoxilyzer 8000 that was used to administer defendant's test, and there is no evidence that the Intoxilyzer 8000 used was not properly certified or not in working order at the time of defendant's test, and defendant failed to demonstrate prejudice.

**Impaired driving.** Mentor v. Morgan, 2021-Ohio-904 | 11th Appellate District | 3/22/21 In a conviction by plea of OVI, denial of motion to suppress was not error where officer had a reasonable, articulable basis to make a traffic stop where officer testified he was notified of

a citizen's report of defendant's erratic driving, officer had personally observed defendant's erratic driving in the early morning hours of a Saturday, his delayed and thick-tongued speech and his stopping in the right lane instead of the berm.

**Endangering children.** State v. Bell, 2021-Ohio-899 | 11th Appellate District | 3/22/21 In a conviction of assault and endangering children, endangering children conviction is reversed since the municipal court lacked subject matter jurisdiction on the endangering children charge because the juvenile court had exclusive jurisdiction where the assault charge was not for a felony, R.C. 2151.23(A)(6); the assault conviction met the sufficiency and weight of evidence standards where eyewitnesses testified to events resulting in injuries to child that were inflicted by defendant.

**Double jeopardy.** State v. Phillips, 2021-Ohio-905 | 11th Appellate District | 3/22/21 In prosecution of, inter alia, animal cruelty following dismissal of a prior action in another jurisdiction for lack of subject matter jurisdiction, denial of motion to dismiss charges on double jeopardy grounds was not error since dismissal of action in prior action for lack of subject matter jurisdiction did not place defendant in jeopardy.

**Appeal.** State v. Foster, 2021-Ohio-907 | 11th Appellate District | 3/22/21 In a conviction by plea of, inter alia, OVI, pro se "Motion to Appeal & Dismiss," filed with the court of appeals after conviction and treated as a notice of appeal, appeal is dismissed since appellant has neither complied with the 30-day rule set forth in App.R. 4(A)(1), nor sought leave to appeal under App.R. 5(A), and thus the court of appeals is without jurisdiction to consider appeal.

**Self-defense.** State v. Chester, 2021-Ohio-918 | 5th Appellate District | 3/22/21 In a conviction of murder and felonious assault, the state provided evidence that defendant did not act in self-defense where defendant had multiple opportunities to escape the situation giving rise to the danger and he not only failed to do so, but escalated the danger by leaving the confrontation with the victim at a bar, going to his vehicle to retrieve a gun, and then returning to the bar parking lot and shooting and killing the victim.

**Discovery.** State v. Stiltner, 2021-Ohio-959 | 4th Appellate District | 3/22/21 In a conviction of, inter alia, aggravated murder, the trial court did not err by not excluding evidence disclosed by the state days before the trial under Crim.R. 16(L) where the state did not willfully delay naming or disclosing witnesses to supplement its discovery responses under Crim.R. 16(A) since the trial court granted defendant's motion to continue the trial.

**Post-conviction relief.** State v. Bunch, 2021-Ohio-1244 | 7th Appellate District | 3/22/21 Following a 2002 conviction of, inter alia, three counts of complicity to rape that was affirmed and grant in part of petition for post-conviction relief on reasoning that sentence imposed on appellant, who was a juvenile at the time of sentencing, was unconstitutional under Graham, the trial court did not err on re-sentencing by sentencing appellant to consecutive prison sentences totaling 49 years.

**Restitution.** State v. Fletcher, 2021-Ohio-919 | 10th Appellate District | 3/23/21 In convictions of theft offenses in four actions in which restitution was ordered, the trial court erred by ordering restitution without holding a hearing in three of the actions since defendant objected to the amount ordered, R.C. 2929.18(A)(1), but in the remaining action since defendant did not object to restitution at the time he was sentenced and did not file a timely direct appeal of that order, his challenge to the restitution order in that case is barred by res judicata.

**Jury instruction.** State v. Greenwood, 2021-Ohio-921 | 10th Appellate District | 3/23/21 In conviction of sexual imposition, R.C. 2907.06(A), the trial court did not commit plain error in instructing the jury on the elements of the sexual imposition statute by citing facts from the indictment with the wording of the statute and providing the statutory definition of sexual contact, Roth.

**Prohibition.** State ex rel. McIntyre v. Ohio Adult Parole Auth., 2021-Ohio-922 | 10th Appellate District | 3/23/21 In inmate's pro se prohibition action to compel respondent to vacate the results of a previous parole revocation hearing that resulted in revocation of parole and to grant him a new revocation hearing, respondent's motion to dismiss is granted where, although the 1991 and 1992 sentencing entries failed to comply

with Crim.R. 32(C) and Baker, the sentence imposed by those entries was not void, and thus respondent's parole determinations premised on relator's 1991 and 1992 sentencing entries were lawful.

**Prohibition.** State ex rel. Cartwright v. Ohio Adult Parole Bd., 2021-Ohio-923 | 10th Appellate District | 3/23/21 In inmate's pro se mandamus and prohibition action to compel respondent to declare relator's parole proceedings prior to February 3, 2016 void and to release him from custody, relator's objection to magistrate's decision to dismiss action is sustained since taking as admitted that relator touched a female's leg, without more from the record, does not establish sexual contact nor was gross sexual imposition or sexual imposition established; dismissal is vacated and action is remanded to the magistrate.

**Plea withdrawal.** State v. Curtis, 2021-Ohio-1145 | 4th Appellate District | 3/23/21 In a conviction by plea of cultivation and possession of marijuana, denial of motion to withdraw plea was not error where motion was made on the day set for the sentencing hearing, the trial court found reasons given for withdrawal were not credible, and the signed plea and the record of the sentencing hearing indicated defendant merely had a change of heart.

**Reopening.** State v. Undiandeye, 2021-Ohio-951 | 8th Appellate District | 3/24/21 Pro se application to re-open appeal, App.R. 26(B), is denied because appellant failed to establish that he was prejudiced by the performance of his appellate counsel since appellant pled guilty, and the plea transcript demonstrates the trial court fully complied with Crim.R. 11; also, App.R. 26(B) applies only to the direct appeal of a criminal conviction and does not apply to subsequent post-conviction proceedings, including hearings to determine the propriety of a guilty plea.

**Ineffective assistance.** State v. Curtis, 2021-Ohio-989 | 5th Appellate District | 3/24/21 In a conviction by plea of aggravated menacing, defendant was not denied effective assistance of counsel where defendant made his plea with the assistance of substitute counsel, as the trial court verified with defendant during the plea colloquy, and defendant provides no authority for his argument that his right to counsel was violated by substitute counsel appearing

at the plea hearing, and thus Crim.R. 44 and 22 did not apply.

**Witnesses.** E. Cleveland v. Harris, 2021-Ohio-952 | 8th Appellate District | 3/25/21 In a conviction of, inter alia, OVI, the trial court did not commit plain error by not administering the oath to the arresting officer before he testified at trial since the oath was administered to officer when he testified at the suppression hearing that was held immediately prior to trial and, since officer's testimony at trial was nearly identical to his sworn testimony at the suppression hearing, the outcome would not have clearly been different if the oath had been administered at the trial.

**Sentencing.** State v. Simmons, 2021-Ohio-939 | 8th Appellate District | 3/25/21 In a conviction by plea of drug and related offenses and imposition of concurrent and consecutive prison sentences totaling five years, the trial court erred in ruling the Reagan Tokes Law unconstitutional as violating the separation of powers doctrine and procedural due process.

**Mistrial.** State v. Solomon, 2021-Ohio-940 | 8th Appellate District | 3/25/21 In a conviction of, inter alia, rape, the trial court did not err by denying defendant's motion for a mistrial following a state witness' vitriolic outburst towards defendant and attempt to attack him on completing his testimony where neither state, defendant, nor the court were responsible for the outburst, no evidence was presented that any juror displayed any emotions during or after the outburst or that the verdict was the product of passion or prejudice, and the trial judge provided curative instructions to the jury.

**Traffic violation.** Cleveland v. Long, 2021-Ohio-941 | 8th Appellate District | 3/25/21 In a conviction of multiple municipal traffic violations, judgment is affirmed where pro se appellant failed to state the error being appealed from nor does he present any cogent legal argument, raising meritless "sovereign citizen" arguments.

**Jury.** State v. Sari, 2021-Ohio-944 | 8th Appellate District | 3/25/21 In a conviction of, inter alia, unlawful sexual conduct with a minor, the trial court did not commit plain error by not declaring a mistrial after dismissing for cause a potential juror who stated that she probably could not be impartial because of an incident involving her daughter in a similar scenario since appellant's unsupported assertion that the comment

somehow prejudiced the jury pool is insufficient to show plain error and, moreover, the record does not indicate that the comment had any impact on the jury.

**Sex offender registry.** State v. Hopson, 2021-Ohio-1166 | 7th Appellate District | 3/25/21 Following a 1991 conviction of attempted rape and kidnapping, the trial court did not err in denying appellant's pro se motion for summary judgment to terminate his sex offender registry obligation since the documentation attached to his motion demonstrates he had been previously classified as a Megan's Law offender and is not a Tier I sex offender, and thus he is not an "eligible offender" authorized to seek termination of his sex offender registry requirement pursuant to R.C. 2950.15, In re Von.

**Alibi.** State v. Reynolds, 2021-Ohio-963 | 1st Appellate District | 3/26/21 In a conviction of domestic violence, the trial court did not shift the burden of proof to defendant to prove his alibi defense since the court weighed defendant's evidence in support of his theory that he had an alibi against victim's testimony to determine who was more believable, and the court did not lose its way in making its credibility determinations.

**Evidence.** State v. Shepard, 2021-Ohio-964 | 1st Appellate District | 3/26/21 In a bench conviction of, inter alia, aggravated murder, admission of evidence that defendant committed other similar robberies did not violate Evid.R. 404(B) or R.C. 2945.59 because the evidence was relevant to establishing defendant's identity as the perpetrator of the charged crimes since he had admitted to police of involvement in five other robberies in which he had attempted to disguise himself similarly as was done in the present case and, in a bench trial, it is presumed the court did not rely on evidence for an improper purpose.

**Evidence.** State v. Gay, 2021-Ohio-970 | 2nd Appellate District | 3/26/21 In a conviction by plea of arson and a weapon offense, the trial court erred by imposing a sentence that was longer than the sentence that the parties and the trial court had agreed to as part of the plea agreement, and on remand the trial court may either impose the agreed prison term or, if it determines that a prison term is no longer appropriate, it must allow defendant the opportunity to withdraw his plea.

**Evidence.** State v. Hemming, 2021-Ohio-971 | 2nd Appellate District | 3/26/21 In a conviction of sexual imposition, the trial court did not err in sustaining the state's objection to defense counsel's question to the alleged victim since defense counsel did not directly ask the witness if she had memory loss and counsel did not proffer that the witness' traumatic brain injury had that symptom, and thus the court reasonably sustained the state's objection to the question as phrased, absent evidence that the brain injury affected her ability to perceive or remember the alleged sexual imposition.

**Indictment.** State v. Pacific, 2021-Ohio-973 | 2nd Appellate District | 3/26/21 In a conviction of breaking and entering of an unoccupied structure, R.C. 2911.13(A), amendment of indictment and bill of particulars at the trial was not error where amendment was made to reflect the correct address that the offense took place and defendant's counsel had been to the correct property, and thus the amendment did not change the name or identity of the offense charged and defendant incurred no prejudice, Crim.R. 7(D).

**Ineffective assistance.** State v. Combs, 2021-Ohio-982 | 6th Appellate District | 3/26/21 In a conviction by plea of vandalism and attempted tampering with evidence, defendant received ineffective assistance of counsel as to the vandalism conviction since the plea was not validly made where counsel failed to advise defendant of the state's admission that it could not prove facts supporting the vandalism charge, and defendant incurred prejudice since it was reasonably likely that had he been advised of this potential defense, he would not have entered his guilty plea.

**Plea withdrawal.** State v. Hall, 2021-Ohio-983 | 6th Appellate District | 3/26/21 Following a conviction of, inter alia, burglary that was not appealed, denial of post-judgment motion to withdraw plea, Crim.R. 32.1, was not error because challenge is barred by res judicata since the issue could have been determined on direct appeal without resorting to evidence outside the record where appellant claims his counsel should have investigated aspects of the burglary charge more in depth and that counsel overstated his possible prison exposure.

**Theft/Failure to comply.** State v. Marx, 2021-Ohio-984 | 6th Appellate District | 3/26/21 Conviction of theft and failure to comply met the sufficiency and weight of evidence standards where multiple eyewitnesses, including an officer who pursued defendant and had face-to-face contact with him, identified defendant as the person who was reported to have stolen merchandise, and the record contains no contrary evidence or testimony on appellant's behalf.

**Plea.** State v. White, 2021-Ohio-987 | 6th Appellate District | 3/26/21 In a conviction by plea of child endangering, R.C. 2919.22(B)(2), plea was not rendered involuntary where defendant stated only that he did not contest the facts recited by the state instead of stating that he admitted those facts, court made the Crim.R. 11(C) advisements before accepting plea, and defendant did not assert that he otherwise would not have entered the plea.

**Assaulting a peace officer.** State v. Smallwood, 2021-Ohio-1103 | 4th Appellate District | 3/26/21 Conviction of assaulting a peace officer, R.C. 2903.13(A), was supported by the weight of evidence where officer testified that defendant struck him while officer was in the performance of his duties when officer told defendant that they needed to discuss an outstanding warrant against defendant, resulting in defendant striking officer in the eye, and there were accompanying photos of the bruising on officer's face, and jury did not lose its way in making its credibility determinations.

**Sentencing.** State v. Jones, 2021-Ohio-1164 | 7th Appellate District | 3/26/21 In a conviction by plea of second-degree felonious assault, R.C. 2903.11(A)(1), imposition of definite three-year sentence without a provision for an indeterminate sentence was error under the Reagan Tokes Law, R.C. 2929.144; remanded for re-sentencing.

**Jail-time credit.** State v. Brown, 2021-Ohio-997 | 12th Appellate District | 3/29/21 In an appeal of denial of additional jail-time credit, appellant's confinement did not arise out of the offenses in a felony case that was brought subsequent to appellant's violation of community control in a prior weapons offense case since the jail-time that appellant was seeking credit for was for his confinement relating solely to his community control violations in the

weapons case since he was released on his own recognizance in the felony case.

**Sealing.** State v. Dewey, 2021-Ohio-1005 | 11th Appellate District | 3/29/21 Denial of application to seal record of conviction by plea of theft and forgery, both first-degree misdemeanors, was not error since appellant did not clearly identify how her privacy interests outweigh the public's right to access the records where the conviction involved offenses that arose out of appellant violation of a position of trust in her employment, and appellant failed to identify specific negative economic or legal consequences to her of maintaining the public record, R.C. 2953.52.

**Right to counsel.** State v. Benson, 2021-Ohio-1013 | 11th Appellate District | 3/29/21 In a conviction by plea of robbery, denial of defendant's pre-plea request to appoint new counsel or to represent himself was not error where there is no indication of a conflict or communication breakdown so severe as to rise to a Constitutional violation, and the record indicates that defendant appreciated appointed counsel's performance at the time of the plea hearing and admitted that counsel explained matters satisfactorily.

**Sealing.** State v. McLandrich, 2021-Ohio-1015 | 11th Appellate District | 3/29/21 Denial of application to seal record of convictions is reversed and remanded since the trial court erred as a matter of law in determining that the offenses were not eligible to be sealed, R.C. 2953.36(A), and the state concedes that appellant is eligible to have the record of her convictions sealed; on remand, the trial court is to consider on the record the evidence in relation to the statutory factors in R.C. 2953.32(C)(1)(a)-(e).

**Sealing.** State v. McLandrich, 2021-Ohio-1016 | 11th Appellate District | 3/29/21 Denial of application to seal record of convictions is reversed and remanded since the trial court erred as a matter of law in determining that the offenses were not eligible to be sealed, R.C. 2953.36(A), and the state concedes that appellant is eligible to have the record of her convictions sealed; on remand, the trial court is to consider on the record the evidence in relation to the statutory factors in R.C. 2953.32(C)(1)(a)-(e).



**Post-conviction relief.** State v. Burton, 2021-Ohio-1008 | 11th Appellate District | 3/29/21 Following a 2018 conviction by plea of a second-degree felony drug offense that was affirmed, denial of 2020 pro se motion for post-conviction relief claiming ineffective assistance of counsel was not error since the trial court record demonstrated that appellant indicated he understood he was pleading guilty to a felony with a prison term of between two and eight years, and he confirmed that no promises were made to him by the court, the prosecutor or his attorney as to what sentence the court would impose.

**Sealing.** State v. Waxler, 2021-Ohio-1017 | 11th Appellate District | 3/29/21 Denial of application to seal record of 1999 conviction of third-degree felony attempted burglary, R.C. 2911.12(A)(3), was not error because appellant is not a statutorily eligible offender since he was convicted of an offense of violence and R.C. 2901.01(A)(9)(a) and (d) render appellant ineligible.

**Impaired driving.** State v. Consiglio, 2021-Ohio-990 | 9th Appellate District | 3/29/21 In a conviction of OVI, denial of motion to suppress was error where the trial court incorrectly considered defendant's vehicle's rapid deceleration as an indicator of impairment since trooper never testified that it was a sign of impairment, and trooper's testimony that defendant had balance issues and had apparent difficulty following instructions, which were not given in substantial compliance with the NHTSA standards during the field tests, notwithstanding that defendant had some indicators of impairment.

**Post-conviction relief.** State v. Weaver, 2021-Ohio-1025 | 5th Appellate District | 3/29/21 Following a conviction of, inter alia, aggravated murder of newly-born child that was affirmed, denial of petition for post-conviction relief was not error where the record does not support claim that the trial judge in the post-conviction proceeding was biased, and the trial court did not abuse its discretion in denying the petition where it found appellant was not prejudiced by any ineffectiveness of trial counsel in not bringing detailed information on neonaticide to the attention of the trial court during sentencing.

**Domestic violence.** State v. Romine, 2021-Ohio-1026 | 5th Appellate District | 3/29/21 In a conviction by plea of domestic violence of a minor, the state

did not lack authority pursuant to R.C. 1.51 to charge defendant with domestic violence instead of child endangering since the elements of each offense differ as to the requisite mental state, and the state has discretion to choose the statute the defendant will be prosecuted under.

**Jail-time credit.** State v. Long, 2021-Ohio-1011 | 11th Appellate District | 3/29/21 Following a 2017 conviction by plea of receiving stolen property and imposition of a 12-month intensive supervision probation program and 36 additional months general probation and subsequent revocation of community control after a 2019 drug conviction, denial of 2019 motion for jail-time credit was not error since appellant has served his sentence and thus his appeal is moot.

**Suppression.** State v. Baker, 2021-Ohio-1004 | 3rd Appellate District | 3/29/21 In a conviction by plea of drug and weapon offenses, denial of motion to suppress confession was not error where the state did not breach an oral agreement allegedly made between defendant and an officer to assist in an undercover operation since defendant's failure to cooperate was not excused by his claim of impossibility to perform, even assuming that such an agreement was enforceable since he failed to demonstrate performance was impossible where officer testified that defendant failed to communicate with him.

**Competency.** State v. Stutzman, 2021-Ohio-995 | 9th Appellate District | 3/29/21 In a prosecution of, inter alia, capital murder, the trial court's finding that defendant was incompetent to stand trial was supported by "some reliable and credible evidence" where the court found defendant's expert doctor's testimony based on defendant's medical records and two separate tests that defendant is not malingering symptoms of a severe mental illness more credible than the state's witnesses.

**Drug offense.** State v. Coyle, 2021-Ohio-1027 | 5th Appellate District | 3/29/21 Following a conviction by plea of drug possession, the trial court did not err in denying motion for leave of court to withdraw plea and for dismissal as a qualified individual under R.C. 2925.11(B)(2) since appellant was not a qualified individual where a citizen call to police was not to report an overdose,

but to report appellant striking a child in a vehicle and, when police arrived, appellant did not claim an overdose and, in investigating the child abuse call, officers found drugs in defendant's vehicle.

**Impaired driving.** State v. Hardison, 2021-Ohio-1028 | 5th Appellate District | 3/29/21 In a conviction by plea of OVI and driving under an OVI suspension, denial of motion to suppress was not error since officer had probable cause to arrest defendant where officer found him unresponsive in the driver's seat with the engine running, he admitted to officer that he drank alcohol the night before, to having a six hour gap in memory and to being on suspension for a previous OVI, and he refused to take field sobriety tests.

**Search.** State v. Miles, 2021-Ohio-1029 | 5th Appellate District | 3/29/21 In a conviction by plea of aggravated trafficking in drugs, denial of motion to suppress was not error since a canine drug sniff and alert did not prolong the traffic stop where the sniff took place eight minutes after the stop, and officer testified that it normally takes him ten to 15 minutes to issue a ticket.

**Evidence.** State v. Johnson, 2021-Ohio-1030 | 5th Appellate District | 3/29/21 In a conviction of aggravated possession of drugs, admission into evidence of defendant's probation officer's card that was found in a container in which drugs were located in vehicle that defendant was driving was not barred by Evid.R. 404(B) since the business card was relevant evidence of something other than defendant's disposition to commit certain acts because it was evidence of his knowledge and ownership of the container found in the vehicle, Evid.R. 404(B), and it also constituted intrinsic evidence.

**Plea withdrawal.** State v. Jackson, 2021-Ohio-1157 | 7th Appellate District | 3/29/21 In a conviction by plea of, inter alia, drug offenses, denial of pre-sentence motion to withdraw plea was not error where the state would be prejudiced due to the death of some of the individuals involved in the case, defendant was represented by competent counsel, Crim.R. 11 hearing was extensive, the court gave full and fair consideration to motion, the motion was not timely where brought on day of sentencing and four months following plea, and defendant did not demonstrate that he had a complete defense.

**Ineffective assistance.** State v. Mc-Call, 2021-Ohio-1032 | 10th Appellate District | 3/30/21 In a conviction of, inter alia, murder, the defense counsel did not provide ineffective assistance by not objecting to testimony of statements appellant made immediately after the murder and later statements made to other persons during jail visits with him since the probative value of the testimony was not substantially outweighed by its tendency to cause undue prejudice and to mislead the jury where appellant only claims there was a harmful effect of the jury knowing he was in jail after the shooting.

**Search.** State v. Shalash, 2021-Ohio-1034 | 10th Appellate District | 3/30/21 In a prosecution of, inter alia, aggravated menacing, grant of motion to suppress was error since officer found a weapon during a protective sweep of defendant's vehicle, and officers had reasonable suspicion that defendant was engaged in criminal activity where a woman reported a man threatened her with a gun, officers had a physical description of the defendant, a description of the car, a partial license number matching defendant's vehicle, and officer did not locate a weapon on the defendant during a pat-down.

**New trial.** State v. Dunkle, 2021-Ohio-1035 | 10th Appellate District | 3/30/21 Following a 2008 conviction of aggravated murder that was affirmed, and denial of petition for post-conviction relief that was affirmed, the trial court did not err in denying motion for leave to file a delayed motion for a new trial, where a person also convicted of the murder stated in an affidavit that he was solely responsible since the affidavit was merely newly available evidence, not newly discovered evidence, since that person could have been called at appellant's trial, but was not, Crim.R. 33(B).

**Jail-time credit.** State v. Myers, 2021-Ohio-1037 | 10th Appellate District | 3/30/21 In pro se consolidated appeals of the denial of a successive motion for jail-time credit in two cases in which jail-time credit had previously been denied and affirmed, the trial court did not err in holding that claims were barred by res judicata.

**Restitution.** State v. Long, 2021-Ohio-1059 | 11th Appellate District | 3/31/21 In a conviction by plea of grand theft of a motor vehicle, the trial court did not commit plain error in ordering restitution since the court considered defendant's present and future ability to pay restitution pursuant to R.C. 2929.19 where, during the sentencing hearing and in the judgment of conviction, the court explicitly stated it considered the pre-sentence investigation report and defendant's ability to pay, and the victim provided evidence of the value of stolen items, R.C. 2929.18(A)(1).

**New trial/Post-conviction relief.** State v. Struckman, 2021-Ohio-1043 | 1st Appellate District | 3/31/21 Following a 2018 conviction of two counts of unlawful possession of a dangerous ordnance that was affirmed, denial of 2018 Crim.R. 33 motion for a new trial is dismissed for lack of jurisdiction since appeal was not timely filed and no leave to appeal was filed, App.R. 3(A), 4(A)(1), and 5; also, denial of a 2019 petition for post-conviction relief without a hearing was not error since it was barred by res judicata where claims presented matters that could have been determined on direct appeal without resorting to evidence outside the trial record.

**Competency.** State v. Spurrier, 2021-Ohio-1061 | 11th Appellate District | 3/31/21 In a conviction of, inter alia, aggravated murder, the trial court did not err in finding defendant competent to stand trial where two competency experts agreed that defendant suffered from a variety of mental health issues, but that he understood the nature and objectives of the proceedings against him and, although a third expert opined that while defendant had a mental illness, a diagnosis of a mental illness is not dispositive of a defendant's competence to stand trial.

**Sentencing.** State v. Noble, 2021-Ohio-1062 | 11th Appellate District | 3/31/21 In a conviction of, inter alia, attempted murder, imposition of indeterminate prison sentence of 10 to 15 years for attempted murder, imposed pursuant to the Reagan Tokes Act, R.C. 2901.011, is affirmed since appellant failed to challenge its constitutionality before the trial court and failed to raise plain error on appeal; also, the trial court properly imposed consecutive sentences where it made the required R.C. 2929.14(C)(4) findings at the sentencing hearing and in the sentencing judgment entry.

**Search.** State v. Moore, 2021-Ohio-1067 | 6th Appellate District | 3/31/21 In a conviction of drug offenses, denial of motion to suppress was not error where officer had probable cause to make a traffic stop of defendant's vehicle and to arrest him for failure to have a valid driver's license; a warrantless search of vehicle's interior disclosing illegal drugs was valid under the automobile exception since officer experienced in drug interdiction had probable cause to believe vehicle contained illegal drugs based on his observation of a hand-to-hand drug transaction in a parking lot.

**Jail-time credit.** State v. Rink, 2021-Ohio-1068 | 6th Appellate District | 3/31/21 Following a 1999 conviction of rape and release in 2001 and placement on post-release control (PRC), appellant was convicted of rape in 2002, denial of jail-time credit for the sentence imposed for the 2002 conviction for time that he was released on PRC for the 1999 conviction was not error since he was not physically held in a "public or private facility intended for penal confinement," and that time is not considered "confinement" in determining jail-time credit for the 2002 conviction, R.C. 2967.191(A).

**Plea.** State v. Rider, 2021-Ohio-1070 | 6th Appellate District | 3/31/21 In a conviction by plea of burglary and attempted burglary, claim that plea was invalid for the trial court's failure to comply with Crim.R. 11(C)(2)(b) requirement to inform appellant that the court could immediately proceed with sentencing is without merit since appellant was not prejudiced because the court did not proceed directly to sentencing.

**Mistrial.** State v. Milligan, 2021-Ohio-1071 | 6th Appellate District | 3/31/21 In a conviction of, inter alia, two counts of rape of a minor, the trial court did not err in denying a motion for mistrial where a state witness mentioned that defendant had been in prison concerning "other acts" since appellant did not object to any "other acts" evidence after his motion in limine was denied, the trial court gave a curative instruction and the other testimony supporting the conviction was overwhelming.

**Plea.** State v. Callaghan, 2021-Ohio-1047 | 9th Appellate District | 3/31/21 In a conviction by plea of, inter alia, murder, the trial court substantially complied with Crim.R. 11(C)(2)(a) notification requirements where, although the trial

court did not state defendant would be ineligible for community control and also failed to mention the maximum fine, the trial court had defendant's signed, written plea form before it during the plea hearing, and the form clearly indicated the mandatory nature of the sentence for murder and listed the maximum fine.

**Jurisdiction.** [State v. Castner, 2021-Ohio-1048 | 9th Appellate District | 3/31/21](#) In a conviction of theft from a person in a protected class and by supplemental indictment of intimidation of a victim, claim that intimidation charge was defective is without merit where defendant's attorney indicated that defendant was aware of the supplemental charge, and defendant appeared for trial and did not object on the basis of lack of personal jurisdiction.

**Evidence.** [State v. Jones, 2021-Ohio-1050 | 9th Appellate District | 3/31/21](#) In a conviction of, inter alia, murder, the trial court did not commit plain error by allowing the county chief medical examiner to testify as to victim's cause of death, even if she did personally perform the autopsy, where she reviewed and signed the autopsy report and testified it was a business record routinely kept in her office, Evid.R. 803(6).

**Self-defense.** [State v. Pittman, 2021-Ohio-1051 | 9th Appellate District | 3/31/21](#) Conviction of, inter alia, felony murder was not against the weight of evidence where defendant's self-defense claim rested essentially entirely on his own self-serving testimony, and the jury could have found that his testimony was not credible since the jury was not required to believe that just because defendant was shot that he had to have been shot by the victim first, nor was it required to believe his self-serving testimony that he shot the victim because he feared for his life.

**Self-defense.** [State v. Preston, 2021-Ohio-1052 | 9th Appellate District | 3/31/21](#) Conviction of four counts of felonious assault was not against the sufficiency and weight of evidence standards where the state presented evidence that defendant did not act in self-defense when he shot at the occupants of a car that lost control since his belief that he was in imminent danger because his life had been threatened previously was not objectively reasonable, and there was nothing about the surroundings that would have impeded defendant from

attempting to escape the situation before using deadly force.

**Search.** [State v. Robinson, 2021-Ohio-1053 | 9th Appellate District | 3/31/21](#) In a conviction of, inter alia, drug offenses, denial of motion to suppress was not error where officers had reasonable suspicion of a traffic violation, appellant voluntarily told officers that any drugs in the vehicle were his and not the passenger's, and the trial court was not required to place its findings in a written entry where it made adequate factual findings in support of its ruling at the conclusion of the hearing.

**Self-defense.** [State v. Straughan, 2021-Ohio-1054 | 9th Appellate District | 3/31/21](#) In a conviction of, inter alia, felonious assault, the state presented sufficient evidence that defendant did not act in self-defense where there was evidence that victim was walking away from defendant following an argument when defendant shot at him, and there was witness testimony from which it could be concluded that defendant could have retreated and, even though there were conflicts in witness testimony, the jury could have reasonably believed that the victim was moving away from defendant when defendant shot at victim.

**Pandering obscenity of a minor.** [State v. Lee, 2021-Ohio-1158 | 7th Appellate District | 3/31/21](#) Conviction of pandering obscenity involving a minor, R.C. 2907.321(A)(5), was supported by sufficient evidence based on the knowledge element due to defendant's admitted ownership of a micro SD card containing the images and sufficient circumstantial evidence that the female in an image was a minor; however, the state offered no evidence to establish defendant brought or caused to be brought into Ohio the two images at issue, and the pandering sexually-oriented matter involving a minor, R.C. 2907.322(A)(6), is reversed.

**Post-conviction relief.** [State v. Panezich, 2021-Ohio-1165 | 7th Appellate District | 3/31/21](#) Following a 2016 conviction by plea of, inter alia, aggravated theft that was affirmed, denial of successive pro se petition for post-conviction relief was not error where untimely filed, R.C. 2953.21(A)(2), and appellant failed to demonstrate that one of the two options in R.C. 2953.23(A)(1)(a) applied; also, res judicata precludes relief since appellant raised the same claims in a prior petition.

**Plea.** [State v. Oliver, 2021-Ohio-1247 | 7th Appellate District | 3/31/21](#) In a conviction by plea of, inter alia, murder, the trial court complied with Crim.R. 11(C)(2)(b) and plea was validly made where trial transcript shows that during the plea colloquy after the trial court asked defendant "Do you understand that if you make a plea of guilty here today you're making a complete admission to these charges?" and the trial transcript shows defendant "(Nods head.)" and defendant fails to show he was prejudiced.

**Post-conviction relief.** [State v. Tidwell, 2021-Ohio-1286 | 7th Appellate District | 3/31/21](#) Following a 1980 conviction by plea of murder, denial of 2020 petition for post-conviction relief was not error where petition was untimely filed and petitioner failed to demonstrate that he met the exception in R.C. 2953.23(A)(1)(a)-(b) for the filing of an untimely petition, and petitioner's incarceration in another state did not serve as a tolling event; also, claim that sentence is void is without merit since the trial court had subject matter and personal jurisdiction, and thus res judicata applies to bar claim, Henderson.

**Jury instruction.** [State v. Italiano, 2021-Ohio-1283 | 7th Appellate District | 3/31/21](#) In a conviction of felonious assault, the trial court did not err by giving a flight instruction where witnesses testified that defendant shot the victim after victim hit defendant during an argument and the victim started running away after defendant displayed his gun, but the victim was shot in his back, defendant then attempted to run the victim down with his vehicle and then sped away from the scene.

**Jail-time credit.** [Bratenahl v. Eldridge, 2021-Ohio-1083 | 8th Appellate District | 4/1/21](#) In a conviction of misdemeanor disorderly conduct, the trial court committed plain error in failing to calculate and apply jail-time credit to the sentence and include it in the body of the sentencing order, 2949.08(C)(1); remanded for calculation of any amount of jail-time credit due.

**Post-conviction relief.** [State v. Ali, 2021-Ohio-1085 | 8th Appellate District | 4/1/21](#) Following a 2006 conviction of, inter alia, rape that was affirmed, denial of 2020 pro se "motion to vacate an unlawful void sentence," treated as a successive, untimely petition for

post-conviction relief without a hearing was not error since the petition does not meet the R.C. 2953.23(A) requirements for an untimely or successive petition, and since sentencing errors are avoidable, not void, they can be challenged only on direct appeal, Henderson.

**Burglary.** State v. Armstrong, 2021-Ohio-1087 | 8th Appellate District | 4/1/21 Conviction of burglary and vandalism met the sufficiency and weight of evidence standards where defendant, although he entered his ex-girlfriend's residence with permission, but was subsequently told to leave but did not, and after the victim left the residence and returned to find the residence and contents damaged and reported it to police, police subsequently found defendant and he admitted to doing the damage, and jury did not lose its way in making its credibility determinations.

**Indictment.** State v. Parker, 2021-Ohio-1090 | 8th Appellate District | 4/1/21 Following a 1996 conviction of aggravated murder and aggravated robbery that was affirmed, denial of 2020 pro se delayed motion to quash the indictment was not error since whether the indictment is defective is an issue that should have been raised at trial or on direct appeal, but was not, and thus res judicata bars attempt to raise the issue now.

**Appeal.** State v. Ogletree, 2021-Ohio-1092 | 8th Appellate District | 4/1/21 Following a 2005 conviction of, inter alia, murder that was affirmed, the trial court denied 2020 pro se "motion to release surety from obligation" that appellant appealed, and then appellant filed a motion for relief from judgment that was denied, appeal of denial of motion for relief from judgment is dismissed for lack of a final appealable order since the trial court had no jurisdiction to consider the motion for relief from judgment after appellant filed his appeal of the denial of his motion to release surety.

**Ineffective assistance.** State v. Sabih, 2021-Ohio-1101 | 8th Appellate District | 4/1/21 In a conviction by plea of felonious assault, R.C. 2903.11(A)(1), and imposition of a nine-year sentence, defendant's claim of ineffective assistance of counsel is without merit where victim's testimony that defendant's attack on him was based on revenge was not challengeable since

defendant admitted to the judge that the attack was based on retaliation for his perceived slights by victim, and any sentencing disparity of a co-defendant is not relevant since nothing in the record reveals that defense counsel was aware of co-defendant's lesser sentence.

**Felonious assault.** State v. Mack, 2021-Ohio-1102 | 8th Appellate District | 4/1/21 Conviction of felonious assault, R.C. 2903.13(B), met the sufficiency and weight of evidence standards where defendant, while officers were attempting to restrain her because of her aggressive actions and refusal to comply with their orders, voluntarily kicked an officer's hand as officer was attempting to restrain her, resulting in serious injury to the officer.

**Assault.** State v. Foster, 2021-Ohio-1155 | 5th Appellate District | 4/1/21 Conviction of assault and kidnapping met the sufficiency and weight of evidence standards since there was a substantial risk of injury where victim testified that defendant deliberately prevented her from leaving his apartment, how he purposely wrapped his arms around her neck, knocked her to the floor and fell on top of her, punched her in the face, banged her head on the floor, and locked the door to prevent her from leaving, and his conduct was not consistent with him having a medical emergency.

**Intervention in lieu of conviction.** State v. Cabannis, 2021-Ohio-1376 | 7th Appellate District | 4/1/21 In a conviction by plea for passing bad checks, R.C. 2913.11, denial of motion for intervention in lieu of conviction, R.C. 2951.041, was not error where the trial court held a hearing and found that intervention could not be granted since the victim named in the indictment was over the age of 65, R.C. 2951.041(B)(7), and claim that injured party was the person to whom the check was given who was under the age of 65 is without merit.

**Transcript.** Shadyside v. Givens, 2021-Ohio-1375 | 7th Appellate District | 4/2/21 In a conviction of noxious weed ordinance, judgment is affirmed where trial tape of the proceedings was defective and could not be transcribed and appellant failed to provide a suitable transcript substitute or an agreed statement, App.R. 9(C) and (D), and thus the regularity of the trial proceedings must be presumed and the judgment affirmed.

**Failure to comply.** State v. Perdue, 2021-Ohio-1115 | 2nd Appellate District | 4/2/21 Conviction of failure to comply with an order or signal of a police officer, R.C. 2921.331(C)(5)(a)(ii), met the sufficiency and weight of evidence standards where defendant created a substantial risk of physical harm to persons or property since state presented officer testimony and dash cam video that defendant sped away from a traffic stop through a residential area at speeds far exceeding the speed limit, failed to stop at a stop sign and the fact that no person or property was actually harmed during the pursuit was irrelevant.

**Search.** State v. Thompson, 2021-Ohio-1118 | 2nd Appellate District | 4/2/21 In a conviction by plea of, inter alia, aggravated vehicular assaults, denial of motions to suppress was error where the trial court relied on its ruling in a prior dismissed action against defendant in holding that res judicata barred challenge without conducting an evidentiary hearing or obtaining factual stipulations since the prior dismissal was not an adjudication on the merits and, although the trial court could have overruled the motion as untimely filed, it did not do so.

**Jury instruction.** State v. Armstrong-Carter, 2021-Ohio-1110 | 2nd Appellate District | 4/2/21 In a conviction of, inter alia, resisting arrest, claim that jury instruction given for resisting arrest provided the wrong burden of proof for the determination of whether excessive force was used by the arresting officers is without merit where defendant provided proposed jury instructions that contain the language that the defendant claims is erroneous and thus is invited error and, moreover, excessive force is not an element of resisting arrest and placing the burden on the defendant to prove excessive force is proper.

**Jury instruction.** State v. James, 2021-Ohio-1112 | 2nd Appellate District | 4/2/21 In a conviction of aggravated assault, R.C. 2903.11, the trial court did not err in overruling defendant's request for an instruction on the inferior degree offense of aggravated assault where defendant did not demonstrate that her actions were the result of "serious provocation" by the victim to incite defendant's use of deadly force in attacking the victim and cutting her eight times with a knife or box cutter.

**Competency.** State v. King, 2021-Ohio-1113 | 2nd Appellate District | 4/2/21 In a conviction of, inter alia, five counts of felonious assault arising out of a shootout with police at defendant's home, the trial court did not err by not holding a competency hearing where defendant was evaluated by two experts who submitted written reports finding defendant competent to stand trial, and defendant stipulated to the contents of the evaluation report and that the examiners would testify consistent with their reports if called as witnesses, R.C. 2945.37(B).

**Search.** State v. Moore, 2021-Ohio-1114 | 2nd Appellate District | 4/2/21 In a conviction of aggravated vehicular homicide, the trial court did not err in denying motion to suppress evidence from a blood-alcohol test that was taken pursuant to a search warrant where, although the blood sample was taken outside the R.C. 4511.19(D) time limits, the results of the test were admissible since the R.C. 4511.19(D) administrative requirements were substantially complied with and expert testimony was offered, Hassler, and the search warrant was executed as soon as possible, even though not within the three-hour period listed in the warrant, Barger.

**Relief from judgment.** State v. Miller, 2021-Ohio-1149 | 5th Appellate District | 4/2/21 Following a 2002 conviction of, inter alia, aggravated robbery and denial of 2020 petition for relief from federal and state firearms disability pursuant to R.C. 2923.14, denial of Civ.R. 60(B)(5) motion for reconsideration was not error because since appellant failed to pursue a direct appeal on the judgment entry and issues on the petition for relief, the application of Civ.R. 60(B)(5) was barred.

**Private citizen affidavit.** State ex rel. Becker v. Faris, 2021-Ohio-1127 | 12th Appellate District | 4/5/21 Following filing of private citizen affidavit by relator, his petition to require prosecutor to conduct a formal and/or systematic investigation into the state governor's purported criminal behavior, related to handling the pandemic, is denied since this is an example of a citizen affidavit that did not need much time to investigate, and the fact that prosecutor spent nearly five hours investigating the claims is, in and of itself, proof that the prosecutor conducted the statutorily required investigation, R.C. 2935.10(A).

**Right to counsel.** State v. Stevens, 2021-Ohio-1156 | 5th Appellate District | 4/5/21 In a conviction by plea of, inter alia, aggravated burglary, defendant was not denied his Sixth Amendment right to be represented by private counsel where he waived appeal of issue in his plea agreement, he responded during the plea colloquy that he was satisfied with counsel, and the court was required to balance the right to counsel of choice against the needs of fairness and against the demands of its calendar since the trial was scheduled to begin and to substitute counsel at a late stage of the proceedings would invite error and possible malpractice.

**Search.** State v. Stout, 2021-Ohio-1125 | 12th Appellate District | 4/5/21 In a conviction by plea of a drug offense, denial of motion to suppress was not error where officer had reasonable cause to stop bicyclist riding without a light in violation of city code and information that officer received that defendant had an outstanding arrest warrant also justified the seizing of the illegal drugs that defendant surrendered under the attenuation doctrine.

**Plea.** State v. Tipton, 2021-Ohio-1128 | 12th Appellate District | 4/5/21 In a conviction by plea of disseminating matter harmful to juveniles, claim that plea was not validly made is without merit where, although the court failed to fully comply with Crim.R. 11(C)(2)(a) because it incorrectly advised appellant of the duration and nature of post-release control, the court's failure is not the type of failure excusing appellant from demonstrating prejudice and, since he did not raise any objection at sentencing when advised he would be subject to a mandatory five-year period of post-release control, he failed to establish prejudice.

**Impaired driving.** State v. Alvaranga, 2021-Ohio-1130 | 3rd Appellate District | 4/5/21 In a conviction by plea of OVI, denial of motion to suppress was not error since trooper had reasonable, articulable suspicion to make a traffic stop where the trial court found trooper's testimony credible that while following defendant's vehicle, he detected the odor of raw marijuana, and he was explicit in the details of his determination that the odor was emanating from defendant's vehicle.

**Jury instruction.** State v. Berry, 2021-Ohio-1132 | 3rd Appellate District | 4/5/21 In a conviction of involuntary manslaughter arising out of a drug overdose, the trial court did not commit plain error by not giving a jury instruction on causation for the charge of involuntary manslaughter where the trial court's instruction was very similar to the relevant Ohio Jury Instructions for causation and included the elements of causation and proximate result, and it was not error not to include a "but for" causation instruction or an instruction of the "substantial" or "contributing" factor under the facts.

**Sentencing.** State v. Mills, 2021-Ohio-1180 | 5th Appellate District | 4/6/21 In a conviction by plea of drug offenses and imposition of mandatory prison term of 10 to 15 years, challenge to indefinite sentencing provisions of the Reagan Tokes Act, R.C. 2967.271, may not be considered because the issue is not ripe for review because defendant has not yet been subject to the application of these provisions since he has not yet served his minimum term.

**Post-conviction relief.** State v. Smith, 2021-Ohio-1177 | 9th Appellate District | 4/7/21 Following a conviction by plea of drug offenses, denial of petition for post-conviction relief was not error where claim that trial counsel provided ineffective assistance by failing to file a motion to dismiss for a speedy trial violation is without merit since there was evidence that both the prosecutor and defense counsel spoke with appellant about his speedy trial time before the plea hearing commenced, and the record supports the conclusion that appellant's decision to plead guilty was a strategic one.

**Mandamus.** State ex rel. Sands v. Cullotta, 2021-Ohio-1137 | Supreme Court of Ohio | 4/7/21 Court of appeals' denial of inmate's pro se mandamus action to compel the trial judge in an underlying criminal action to recalculate his jail-time credit is affirmed since the complaint does not state a cognizable mandamus claim because relator could have raised that issue in his direct appeal of his criminal conviction or he can raise it in a post-sentence motion to correct jail-time credit pursuant to R.C. 2929.19(B)(2)(g)(iii).

## Criminal Law (continued)

**Gross sexual imposition.** State v. Hess, 2021-Ohio-1248 | 4th Appellate District | 4/7/21 Conviction of two counts of gross sexual imposition, R.C. 2907.05(B), and disseminating matter harmful to juveniles, R.C. 2907.31(A)(1), was supported by the weight of evidence where victim provided testimony if believed by the jury that defendant committed the acts he was charged with, and the jury did not lose its way in making its credibility determinations.

**Aggravated murder.** State v. Smith, 2021-Ohio-1185 | 8th Appellate District | 4/8/21 In a conviction of aggravated murder, R.C. 2903.01, there was sufficient evidence of defendant's purposeful killing with prior calculation and design where, although encounter with victim was brief, it was sufficient for defendant to have planned and killed the victim with prior calculation and design and trier of fact did not lose its way in determining that defendant did not act in self-defense where defendant's prior encounter with victim did not require the trier of fact to find that defendant acted in self-defense in light of her subsequent conduct.

**Pre-indictment delay.** State v. Jabbar, 2021-Ohio-1191 | 8th Appellate District | 4/8/21 In a conviction by plea of a sexual offense, denial of motion to dismiss for 15-year pre-indictment delay was not error since the action was brought within the statute of limitations and the delay in prosecution was not a due process violation where appellant failed to show that he was actually prejudiced by the delay since, during the hearing scheduled for the motion, appellant pled guilty, constituting a tactical, strategic decision to plead guilty, rather than pursuing the pre-indictment delay issue.

**Plea.** State v. Gooden, 2021-Ohio-1192 | 8th Appellate District | 4/8/21 In a conviction by plea of, inter alia, four counts of aggravated robbery, plea was validly made where the trial court complied with Crim.R. 11(C) by correctly informing defendant that weapon specifications ran consecutively, and Crim.R. 11(C) does not require the court to advise a defendant of the cumulative total of all prison terms for all the offenses at the time of the plea.

**Plea withdrawal.** State v. Gloeckner, 2021-Ohio-1193 | 8th Appellate District | 4/8/21 In a conviction by plea of sexual battery, the trial court did not err by

denying a motion to withdraw the plea made at the sentencing hearing that was renewed after a competency hearing finding defendant competent, where reason given by defendant was that he pled in order to avoid diabetic issues if he was confined prior to sentencing, but his diabetic condition was discussed with the court at the plea hearing and defendant said it was not an issue in his making a valid plea, and the court found that defendant had only a change of heart about the plea.

**Restitution.** State v. Speights, 2021-Ohio-1194 | 8th Appellate District | 4/8/21 In a conviction by plea of, inter alia, four counts of aggravated burglary involving thefts of ATMs, award of restitution was not plain error where defendant did not challenge the amount at the sentencing hearing, and the trial court was not required to hold a restitution hearing, the amount of losses and damages claimed by each victim was supported by documentation, and nothing in the record indicates that any of victims had insurance coverage that might cover all or part of the damages or losses, R.C. 2929.18(A)(1).

**Evidence.** State v. Mead, 2021-Ohio-1107 | 1st Appellate District | 4/9/21 In a conviction of, inter alia, domestic violence, admission of other acts evidence was not error where defense counsel elicited information from victim during cross-examination that the victim originally did not want to go forward with the domestic violence charge, and the state, to rehabilitate victim, elicited information that victim decided to continue with the domestic violence case due to "constant threats and more hands on," to show her state of mind, not to show defendant's propensity for violence, Evid.R. 404(B).

**Search.** State v. Penwell, 2021-Ohio-1216 | 2nd Appellate District | 4/9/21 In a conviction by plea of drug offense, denial of motion to suppress was not error where two officers encountered defendant at a hospital after he had been admitted for a drug overdose since encounter was consensual, even if search occurred while appellant lay on a bed in a corridor in the hospital's emergency department since encounter occurred in a relatively less confined setting than an emergency room, officers were at the hospital for another purpose, and officers' language and demeanor did not obviously constitute a display of authority, Black.

**Hearing.** State v. Ahreshien, 2021-Ohio-1223 | 6th Appellate District | 4/9/21 In a conviction of rape, abduction and domestic violence, the trial court did not commit plain error by holding a hearing before the trial outside of defendant's presence and without seeking a waiver as required by Crim.R. 43(A) and the constitutional right to be present at all critical stages since defendant failed to demonstrate prejudice where the court held a prior hearing on the admissibility of Crim.R. 404(B) evidence with defendant present, and one week later, with defendant absent, the court merely delivered its findings.

**Miranda.** State v. Villella, 2021-Ohio-1217 | 2nd Appellate District | 4/9/21 In a conviction by plea of six counts of sexual battery, denial of motion to suppress statements defendant made during a custodial interrogation was not error where defendant signed a waiver of his Miranda rights that was made knowingly, intelligently and voluntarily, and officer used no intimidation, coercion or deception during the interview.

**Sealing.** State v. Tingler, 2021-Ohio-1224 | 6th Appellate District | 4/9/21 In a pro se application to seal, the trial court erred in denying the application without holding a hearing to determine whether appellant is an eligible offender under R.C. 2953.31, and if so, whether appellant is entitled to expungement under R.C. 2953.32; on remand, the trial court must make the required findings on the record.

**Escape.** State v. Brown, 2021-Ohio-1249 | 5th Appellate District | 4/9/21 Conviction of escape from supervised release detention, R.C. 2921.34, following appellant's violation of parole conditions was supported by the sufficiency and weight of evidence standards where the state produced evidence that appellant was under post-release control that is included as a "supervised release detention" in R.C. 2921.34(D), and he was required to be supervised by a probation officer who was an employee of the Department of Rehabilitation and Correction.

**Search.** State v. Turpyn, 2021-Ohio-1251 | 5th Appellate District | 4/9/21 In a conviction by plea of drug offenses, denial of motion to suppress was not error where officers' traffic stop of defendant's vehicle was supported by reasonable suspicion of a marked

lanes violation, defendant gave officers drug contraband following canine alert, providing probable cause for officers search of vehicle, and stop was not unreasonably prolonged for the canine sniff.

**Fine/Court costs.** State v. Brock, 2021-Ohio-1279 | 4th Appellate District | 4/9/21 In a conviction of drug offenses, challenge to imposition of fines and court costs is without merit where the trial court considered appellant's present and future ability to pay them as required by R.C. 2929.19(B)(5), and the court of appeals does not have the authority under R.C. 2953.08(G)(2) to vacate a fine on the basis that the record does not support a finding on the ability to pay under R.C. 2929.19(B)(5).

**Domestic violence.** State v. Stoneking, 2021-Ohio-1307 | 5th Appellate District | 4/12/21 Conviction of domestic violence, R.C. 2919.25(A), met the sufficiency and weight of evidence standards where victim was a "person living as a spouse," R.C. 2919.25(F)(2), since she shared a residence with defendant at the time he assaulted her as she was giving him Narcan for a drug overdose.

**Ineffective assistance.** State v. Patton, 2021-Ohio-1230 | 9th Appellate District | 4/12/21 In a conviction of domestic violence and two counts of felonious assault, defense counsel did not provide ineffective assistance by not seeking a continuance in order to obtain the benefit of the amended self-defense statute, R.C. 2901.05(B), since the decision to seek a continuance is a debatable trial tactic that does not support a claim of ineffective assistance, and whether a continuance would have been granted and whether the court would have provided an instruction based on the new statute is pure speculation.

**Plea.** State v. Gray, 2021-Ohio-1227 | 9th Appellate District | 4/12/21 In a conviction by plea of a fourth-degree sexual offense, plea was validly entered where, although the trial court did not fully comply with Crim.R. 11(C)(2)(a) by only advising defendant of the requirement to register as a Tier II Sex Offender at the plea hearing, it substantially complied, and defendant failed to demonstrate that he would not have pled guilty since his counsel stated at the plea hearing that she had informed defendant of the registration requirements and the plea form contained the information, and thus he was not prejudiced, Dangler.

**Traffic violation.** State v. Houlihan, 2021-Ohio-1228 | 9th Appellate District | 4/12/21 Bench conviction of improper backing of a motor vehicle met the sufficiency and weight of evidence standards where the testimony of the driver and passenger of the vehicle involved in the collision with defendant's vehicle, of the investigating officer and of defendant, together with the photographs of the vehicles, establish that defendant pulled into the eastbound lane of oncoming traffic and, without exercising vigilance by looking for traffic while turning and backing into his driveway, collided with victim's vehicle that was proceeding in its lane of travel.

**Complaint.** State v. Vertrees, 2021-Ohio-1239 | 3rd Appellate District | 4/12/21 In a conviction of contributing to unruliness or delinquency, R.C. 2919.24(B)(2), the trial court did not commit plain error in denying defendant's motion to dismiss the complaint by allowing the amendment of the numerical designation of the applicable statute after the trial since defendant was not prejudiced in preparing for her defense by the amendment since it did not change the name or the identity of the offense charged in the complaint that included the statutory language of the relevant statute.

**Jury instruction.** State v. Williams, 2021-Ohio-1256 | 11th Appellate District | 4/12/21 In a conviction of, inter alia, robbery, R.C. 2911.02(A)(2), the trial court did not err by not providing a complicity instruction since, when a conviction for the charged offense is supported by sufficient evidence, the failure to give a lesser-included offense instruction is harmless because the result of the proceedings would not have been different but for the lack of the instruction.

**Right to counsel.** State v. Bair, 2021-Ohio-1257 | 11th Appellate District | 4/12/21 In a prosecution of rape, denial of defendant's request that both of his attorneys be permitted to be physically present at the counsel table during his trial was error since the trial court based its ruling on COVID-19 concerns that could be accommodated, especially in view of the fundamental right of a defendant to be represented by counsel of choice.

**Evidence.** State v. Williams, 2021-Ohio-1250 | 5th Appellate District | 4/12/21 In a conviction of multiple counts of rape and forcible rape of two minors, the trial court did not err in the admission of testimony of prior acts of child molestation of the two minors who were victims in the charged offenses and of an additional minor who was not involved in the charged offenses since Evid.R. 404(B) permitted admission of evidence of defendant's prior crime because it helped to prove motive, preparation and plan on his part, and the prejudicial effect did not substantially outweigh the probative value of that evidence.

**Weapons disability.** In re Parks, 2021-Ohio-1258 | 11th Appellate District | 4/12/21 Denial of application for relief from weapons disability was error where the trial court denied application without an evidentiary hearing, R.C. 2923.14(D).

**Mandamus.** State ex rel. Person v. McCarty, 2021-Ohio-1207 | Supreme Court of Ohio | 4/13/21 In an appeal of the court of appeals' dismissal of pro se mandamus action to compel the trial judge in underlying criminal action to vacate relator's conviction and re-sentence him, judgment is affirmed since relator had an adequate remedy by direct appeal to challenge claimed failure of the jury to render a unanimous verdict on a kidnapping charge, and relator had an adequate remedy at law by an App.R. 26(B) application for re-opening to raise the claim of ineffective assistance of appellate counsel for failure to raise a jury verdict issue.

**Post-conviction relief.** State v. Horner, 2021-Ohio-1312 | 5th Appellate District | 4/13/21 Following a 2020 conviction by plea to drug offenses, denial of pro se petition for post-conviction relief was not error since appellant's remedy for release from confinement on the basis that his continued incarceration during the COVID-19 pandemic violates his constitutional rights is a petition for writ of habeas corpus or, if appellant is challenging the conditions of his confinement, a civil rights action under 42 U.S.C. 1983 is the appropriate remedy.

**Tampering with evidence.** State v. Greeno, 2021-Ohio-1372 | 4th Appellate District | 4/13/21 Conviction of tampering with evidence, R.C. 2921.12(A)(1), met the sufficiency and weight of evidence standards where, after defendant's arrest and transport to jail,

## Criminal Law (continued)

officer testified that during preparation to incarcerate defendant, defendant appeared to ingest some substance, which likely was a controlled substance in light of the near immediate change in his demeanor from aggressive to passive, requiring hospitalization, and the jury did not engage in impermissible inference stacking.

**Duress.** State v. Womack, 2021-Ohio-1309 | 5th Appellate District | 4/14/21 In a conviction of, inter alia, aggravated burglary, the trial court did not err by not giving a jury instruction on the affirmative defense of duress where, although defendant argued that two other individuals that he claimed to be involved in the offense threatened that they would harm him and his family if he did not participate in the burglary, that belief was not objectively reasonable since defendant had an opportunity to escape during the course of the burglary and the fear of future harm cannot be the basis for the threat of duress.

**Private citizen affidavit.** State ex rel. Whittaker v. Lucas Cty. Prosecutor's Office, 2021-Ohio-1241 | Supreme Court of Ohio | 4/14/21 In a mandamus action to compel the county prosecutor's office to bring felonious assault charges against two individuals, the court of appeals did not err in granting summary judgment in favor of the prosecutor where the prosecutor had previously brought other charges against the individuals named in relator's citizen's affidavit that resulted in child endangering convictions, the prosecutor determined that no additional charges were warranted since relator offered no new evidence, and relator failed to demonstrate any abuse of discretion by the prosecutor, R.C. 2935.09.

**Failure to verify address.** State v. Converse, 2021-Ohio-1274 | 1st Appellate District | 4/14/21 In a conviction for failure to verify address, R.C. 2950.06, the trial court did not commit plain error by using appellant's juvenile adjudication as an element of the offense for a violation of R.C. 2950.06 since it did not violate his constitutional right to a jury trial since the juvenile adjudication did not serve as a sentence enhancer, the adjudication is not equated to a criminal conviction, and it is the existence of the adjudication, not its reliability, that is at issue, *Buttery*.

**Jury instruction.** State v. Thorpe, 2021-Ohio-1295 | 8th Appellate District | 4/15/21 In a conviction of reckless homicide, R.C. 2903.041, the trial court did not err by giving a jury instruction on the lesser-included offense of reckless homicide in a prosecution for murder since there was an absence of evidence of intent or motive by appellant to cause victim's death, the trial court reasonably concluded that appellant could be acquitted of murder and convicted of the lesser-included offense of reckless homicide, and negligent homicide is not a lesser-included offense of murder or reckless homicide.

**Prosecutorial misconduct.** State v. Sims, 2021-Ohio-1296 | 8th Appellate District | 4/15/21 In a conviction of, inter alia, aggravated murder, although prosecutor's remark at the opening statement linking defendant to another shooting was arguably improper other acts evidence, appellant was not prejudiced where the state presented overwhelming, well-corroborated testimonial evidence to prove appellant's guilt at the trial.

**Jury instruction.** State v. Ellis, 2021-Ohio-1297 | 8th Appellate District | 4/15/21 In a conviction of, inter alia, murder, the trial court did not commit plain error in its jury instructions by not giving the self-defense instruction prior to the other instructions where the instructions mirrored the order of instructions as presented in the Ohio Jury Instructions, were the correct statements of the law, were given in a logical manner and the order benefitted appellant since the order could benefit a defendant because a jury could acquit on the charge without a consideration of self-defense.

**Plea withdrawal.** State v. Ritchie, 2021-Ohio-1298 | 8th Appellate District | 4/15/21 In a 2016 conviction by plea of assault against a police officer and three subsequent violations of community control and imposition of a 36-month prison sentence, denial of 2019 motion to withdraw plea without a hearing was not error where claim of ineffective assistance of counsel was not supported by claim that there were discrepancies and falsehoods in the various police reports from the initial arrest since none of the alleged discrepancies demonstrate that the plea was not validly entered.

**Burglary.** State v. Goins, 2021-Ohio-1299 | 8th Appellate District | 4/15/21 Bench conviction of second-degree felony burglary was error where the state failed to prove that a person was "likely to be present" in the occupied structure when burglary occurred since victim-sister was on vacation when burglary occurred, and there was no evidence that victim had asked anyone to check her residence, and thus no one was present or likely to be present when the burglary occurred, R.C. 2911.12(A)(2), but evidence was sufficient to support a conviction of the lesser-included offense of third-degree felony burglary, R.C. 2911.12(A)(3).

**Right to counsel.** State v. Nicholson, 2021-Ohio-1300 | 8th Appellate District | 4/15/21 In a conviction by plea of drug and weapons offenses, the trial court did not err by not conducting an evidentiary hearing on defendant's oral motion to appoint new counsel where the court considered the request, but noted it was made on the day set for trial, and defendant failed to overcome the presumption of bad faith when a motion for new counsel is made on the date set for trial since record demonstrates defense counsel had thoroughly investigated the case and was prepared to argue a motion to suppress and to go to trial.

**Joinder.** State v. Tomlinson, 2021-Ohio-1301 | 8th Appellate District | 4/15/21 In a conviction in two cases of inter alia, attempted murder arising out of three separate shootings, denial of motion from prejudicial joinder of offenses was not error since indicted offenses were of the same or similar character by relating to defendant's unlawfully firing the same weapon at victims into vehicles and on or near prohibited premises; one individual was a victim in two of the three shootings and two of the three shootings were tied to a social-media feud with another group, *Crim.R. 8(A)*; joinder was not prejudicial since evidence was simple and direct, *Crim.R. 14*.

**Plea.** State v. Blakey, 2021-Ohio-1304 | 8th Appellate District | 4/15/21 In a conviction by plea of, inter alia, burglary, plea was not validly made since the trial court failed to strictly comply with *Crim.R. 11(C)(2)(c)* where, although the trial court stated that defendant was "entitled" to certain things, it did not explain that by pleading guilty, defendant was waiving the constitutional rights enumerated in *Crim.R. 11(C)(2)(c)*.



**Plea withdrawal.** State v. Murray, 2021-Ohio-1335 | 2nd Appellate District | 4/16/21 In a conviction by plea of OVI, denial of pre-sentence motion to withdraw plea was not error where the trial court reasonably concluded at a hearing that appellant lacked a reasonable and legitimate basis to withdraw her plea, she executed a waiver of her right to counsel at arraignment and to proceed pro se, and her claimed "chronic illnesses," anxiety, and high blood pressure were not in evidence.

**Jail-time credit.** State v. Brandon, 2021-Ohio-1328 | 2nd Appellate District | 4/16/21 Following a 2017 conviction and imprisonment for tampering with evidence and commission of additional offenses while on transitional control release, denial of pro se motion for jail-time credit was not error where appellant was given the appropriate jail-time credit for the time he spent in jail for the various offenses.

**Voyeurism.** State v. Sipple, 2021-Ohio-1319 | 1st Appellate District | 4/16/21 Conviction of attempted voyeurism, R.C. 2907.08(D), met the sufficiency and weight of evidence standards where defendant placed a phone under the victim's dress to carry out his stated intention to the victim, constituting a substantial step toward committing the offense, even if no recording took place; also, the trial court did not err by including the tier classification in the sentencing entry and orally informing defendant at the sentencing hearing of his R.C. 2929.23(B) registration duties and their duration.

**Assault.** State v. Johnson, 2021-Ohio-1321 | 1st Appellate District | 4/16/21 Bench conviction of assault met the sufficiency and weight of evidence standards where the trial court as finder of fact did not clearly lose its way in crediting victim's testimony concerning defendant's conduct, rather than defendant's version, and since domestic violence charge was merged with the assault charge, there was no conviction of domestic violence since there was no verdict on that charge.

**Hearsay.** State v. Thompson, 2021-Ohio-1344 | 6th Appellate District | 4/16/21 In a conviction of assault, the trial court did not err by admitting officers' testimony of statements made by persons that were for the purpose of aiding the officers' investigation, and thus the statements were not

impermissible hearsay nor did they violate the confrontation clause; also, the trial court did not err by not permitting defense counsel in closing argument to make statements about possible specific gang-related involvement in injuring the victim that had no evidentiary support in the record.

**Evidence.** State v. Beall, 2021-Ohio-1326 | 2nd Appellate District | 4/16/21 In a conviction of, inter alia, murder and robbery, admission of other-acts evidence of other robberies that were committed in other counties was not error where the evidence setting forth appellant's assistance to murder victim-accomplice in committing the robberies in other counties constituted relevant other-acts evidence of appellant's motive for the accomplice's murder because appellant considered his accomplice to be a "loose end" who might talk to the police, Evid.R. 404(B).

**Plea withdrawal.** State v. Johnson, 2021-Ohio-1333 | 2nd Appellate District | 4/16/21 Following a conviction by plea in 2000 of having a weapon while under a disability with a firearm specification, denial of 2020 pro se motions to withdraw plea and for relief from judgment and to correct sentence was not error where appellant failed to provide any explanation for the delay in filing his motions, which supported the trial court's decision to overrule them and, since appellant failed to provide the plea hearing transcript, regularity in the trial court's proceedings at the plea hearing must be presumed.

**Weapon forfeiture.** State v. Leet, 2021-Ohio-1334 | 2nd Appellate District | 4/16/21 In a conviction of a minor misdemeanor disorderly conduct for which defendant was fined and subsequent welfare check of defendant, resulting in a 72-hour mental health admission and seizure of a firearm of defendant at his home, denial of motion for return of firearm was error since the disorderly conduct charge did not contain a forfeiture specification precluding criminal forfeiture under R.C. 2981.04 since appellant was an involuntary patient only for purposes of observation, and the firearm was seized without compliance with R.C. Ch. 2981.

**Aggravated menacing.** State v. Owensby, 2021-Ohio-1336 | 2nd Appellate District | 4/16/21 Bench conviction of aggravated menacing was not against the weight of evidence where the trial court found victim's account

credible that defendant threatened her with a handgun, and the absence of surveillance footage did not make conviction against the weight of the evidence that was presented; defendant's argument on appeal about the lack of testimony from an officer or third-party witness is without merit since nothing in the record suggests there were any third-party witnesses.

**Sentencing.** State v. Ross, 2021-Ohio-1337 | 2nd Appellate District | 4/16/21 In a conviction by plea of felonious assault with a firearm specification, imposition of a definite prison sentence of two years on the felonious assault charge was error since the two-year definite sentence for felonious assault violated the Reagan Tokes Act, R.C. 2967.271, Ferguson; remanded for re-sentencing.

**Jail-time credit.** State v. Richardson, 2021-Ohio-1342 | 6th Appellate District | 4/16/21 In a conviction of receiving stolen property and one count of identity fraud, defendant was not entitled to jail-time credit for the time he was held in pre-trial confinement in another county on a different case, R.C. 2967.191(A).

**Ineffective assistance.** State v. Rivera, 2021-Ohio-1343 | 6th Appellate District | 4/16/21 In a conviction by plea of domestic violence, defendant did not receive ineffective assistance since defense counsel's negotiation of a plea bargain was a "trial tactic" where defendant openly admitted his guilt and received a substantially shorter sentence than he was subject to under the original charges and, moreover, defendant could not establish prejudice since the record does not contain evidence indicating the state would have been unable to secure witnesses to testify against defendant.

**Miranda.** State v. Williams, 2021-Ohio-1340 | 2nd Appellate District | 4/16/21 In a conviction of, inter alia, aggravated murder, denial of motion to suppress was not error where defendant validly waived his Miranda rights, even though he refused to sign the written waiver, where he was read his Miranda rights and expressed his understanding, there was nothing coercive about the interview environment at the police station, he requested to be interviewed on one occasion and signed the waiver form for that interview, and officer's false assurances that interview was not being recorded did not overbear defendant's will.

**Self-defense.** State v. Staats, 2021-Ohio-1325 | 5th Appellate District | 4/16/21 In a conviction of domestic violence, R.C. 2919.25(A), the trial court did not commit plain error by not giving a jury instruction on self-defense since there was no evidence presented that defendant was in fear of deadly force from the victim or that defendant needed to push victim repeatedly to defend himself from any imminent use of unlawful force by the victim where he did not state he was in fear of bodily harm, but that he merely wanted to stop her "from getting in his face," R.C. 2901.05(B)(1).

**Search.** State v. Lewis, 2021-Ohio-1360 | 5th Appellate District | 4/16/21 Following a conviction by a plea of drug offense that was affirmed, denial of petition for post-conviction relief was not error where claim of ineffective assistance of trial counsel in not cross-examining certain witnesses and failing to ask any questions about the actual search of the vehicle is without merit since the traffic stop was not prolonged beyond the approximate ten minutes it usually took officer to issue a warning for excessive speed and, when canine alerted, officer had probable cause to search vehicle and extend stop.

**Appeal.** State v. Taggart, 2021-Ohio-1350 | 12th Appellate District | 4/19/21 Appeal of denial of motion for reconsideration of denial of jail-time credit following conviction of drug offenses is dismissed sua sponte by the court of appeals for lack of a final appealable order since a motion for reconsideration is a nullity and did not extend the time for filing an appeal of the denial of motion for jail-time credit, App.R. 4(A)(1).

**Sealing.** State v. Gomez, 2021-Ohio-1357 | 3rd Appellate District | 4/19/21 Denial of application to seal domestic violence conviction was not error where the trial court held a hearing and made the required findings that the state's interest in maintaining the record of a domestic violence conviction in view of the nature of the offense outweighed the applicant's general interest in sealing.

**Impaired driving.** State v. Williams, 2021-Ohio-1359 | 3rd Appellate District | 4/19/21 Bench conviction of OVI, R.C. 4511.19(A)(1)(a), met the sufficiency and weight of evidence standards where officer arriving at a single vehicle

accident noticed an odor of alcohol coming from defendant, defendant's eyes were glassy and bloodshot, he was unsteady on his feet and refused both the field sobriety tests and the breath test, and the trial court determined that officer was more credible than defendant.

**Search.** State v. Derifield, 2021-Ohio-1351 | 12th Appellate District | 4/19/21 In a conviction of drug and weapons offenses, denial of motion to suppress was not error where statements in search warrant were permissible ones by officer since he knew defendant by his nickname, and thus was a matter of routine interpretation and not an improper inference, and Facebook messages between two individuals provided probable cause that a stolen weapon would be located at defendant's residence; the trial counsel did provide ineffective assistance by not filing an affidavit of indigency since defendant faced significant mandatory fines.

**Post-conviction relief.** State v. Williams, 2021-Ohio-1355 | 3rd Appellate District | 4/19/21 Following a conviction of, inter alia, drug offenses that was affirmed, denial of pro se petition for post-conviction relief without a hearing was not error where claim of ineffective assistance of counsel is barred by res judicata since appellant was represented by new counsel in his direct appeal, and appellant was aware of the basis of his claims at the time of his trial and his direct appeal.

**Plea withdrawal.** State v. Wolfe, 2021-Ohio-1354 | 3rd Appellate District | 4/19/21 In a conviction by plea of sexual and related offenses, denial of pre-sentence motion to withdraw plea was not error where the trial court substantially complied with the notifications required by Crim.R. 11(C)(2)(a) and (b) concerning the sentence, defendant unequivocally stated he understood he was subject to a potential prison term as well as a sex-offender classification, and that he understood pleading guilty was a complete admission of his guilt; also, his claims of innocence were merely a change of heart.

**Search.** State v. Shaibi, 2021-Ohio-1352 | 12th Appellate District | 4/19/21 In state's appeal of grant of motion to suppress in a drug prosecution, the trial court did not err since traffic stop was unreasonably prolonged beyond initial purpose for stop where delay was for a

record check and photograph unrelated to an inquiry incident to traffic stop, and defendant's continued detention was nothing more than a fishing expedition after trooper verified the vehicle's rental agreement and that a package of jewelry was properly accounted for, and subsequent consent of search was compelled.

**Impaired driving.** State v. Lyndon, 2021-Ohio-1370 | 12th Appellate District | 4/19/21 In a conviction of OVI, R.C. 4511.19(A)(1)(a), denial of motion to suppress was not error where, inter alia, officer had reasonable suspicion that defendant was impaired when he found defendant parked in a traffic lane with the car alarm sounding in the early hours of Sunday, there was a strong odor of alcohol coming from defendant, she had slurred speech and bloodshot eyes, she admitted that she had been drinking at a nearby bar and said she was "disoriented."

**Post-conviction relief.** State v. Hatton, 2021-Ohio-1416 | 4th Appellate District | 4/19/21 Following a 1997 conviction of, inter alia, rape and burglary that was affirmed, and denial of numerous post-conviction motions, denial of 2019 motion for leave to file a motion for a new trial and a successive petition for post-conviction relief was not error since barred by res judicata where the same DNA arguments were raised and decided adversely to appellant in a 1998 petition for post-conviction relief that was affirmed.

**Evidence.** State v. Moore, 2021-Ohio-1379 | 10th Appellate District | 4/20/21 In a conviction of felonious assault, R.C. 2903.11, admission of Facebook posts and comments was not error where defendant admitted to police during the investigation that he made posts on his Facebook page of photos of the incident and was aware of the posts about the incident on his Facebook page and the Facebook posts contain information consistent with the events at issue, and thus the information was properly authenticated, Evid.R. 901(B)(1).

**Burglary.** State v. Walker, 2021-Ohio-1381 | 10th Appellate District | 4/20/21 Conviction of burglary, R.C. 2911.12, met the sufficiency and weight of evidence standards where owner of premises testified that defendant was no longer permitted in the owner's residence at the time that defendant was there, and defendant admitted to an officer that he had moved out of the

victim's residence the day previous to the date he entered the victim's premises, and jury did not lose its way in making its credibility determinations.

**Post-conviction relief.** State v. Chafin, 2021-Ohio-1383 | 10th Appellate District | 4/20/21 Following a 1993 conviction by plea of, inter alia, murder that was not appealed, denial of pro se 2020 motion to amend sentencing judgment entry, treated as an untimely, successive petition for post-conviction relief, was not error since appellant failed to demonstrate that the petition met the exceptions in R.C. 2953.23(A) (1) or (2) for the filing of an untimely and successive petition; petition is also barred by res judicata since the sentencing issues raised could have been raised in a direct appeal.

**Speedy trial.** State v. Lichtenwalter, 2021-Ohio-1394 | 5th Appellate District | 4/20/21 Following a 2019 conviction by plea of failure to comply, the trial court's denial of pro se "Motion to Dismiss" and related pleadings based on appellant's claim of speedy trial violation was not error since appellant pled guilty and thus his speedy trial claims were rendered moot or waived; also, the trial court did not err in denying petition for post-conviction relief based on speedy trial claims, and denial of motion for judicial release is not a final appealable order.

**DNA testing.** State v. Smith, 2021-Ohio-1389 | 1st Appellate District | 4/21/21 Following a 2017 conviction of two counts of murder that was affirmed, denial of post-conviction request for DNA testing, R.C. 2953.71, et seq., was error since the trial court failed to give reasons for the denial as required by R.C. 2953.73(D); remanded with instructions for the trial court to provide reasons.

**Telecommunications harassment.** State v. Smith, 2021-Ohio-1391 | 1st Appellate District | 4/21/21 Bench conviction of telecommunications harassment, R.C. 2917.21(B)(1), was not against the weight of evidence where victim testified that defendant made threatening statements to her through another person's Facebook messenger service with whom the victim had a previous relationship with and with whom defendant was having a relationship with at the time the threatening statements were made, and victim identified defendant as the person with whom she had the conversation.

**Fine.** State v. Zsigray, 2021-Ohio-1401 | 8th Appellate District | 4/22/21 In a conviction by plea of drug possession, R.C. 2925.11(A), imposition of mandatory fine of \$5,000 was error where record reflects defendant demonstrated he is indigent and unable to pay the mandatory fine in view of his advanced age, he had a broken back, is unemployed with a tenth-grade education, has no income and struggles to pay bills, has a felony conviction and a lengthy history with drugs and alcohol.

**Retaliation.** State v. Merriman, 2021-Ohio-1403 | 8th Appellate District | 4/22/21 Conviction of four counts of retaliation, R.C. 2921.05, was not supported by the sufficiency and weight of evidence standards where defendant's claims of planning to harm a judge and police officers made to mental health specialists at a hospital that occurred during a mental-health crisis and bipolar episode at the time he made the threats against the judge and police officers, none of whom verified that they had knowledge of defendant, and threats ceased after medication and a stay in a psychiatric unit.

**Ineffective assistance.** State v. Marriott, 2021-Ohio-1404 | 8th Appellate District | 4/22/21 In a conviction by plea of aggravated vehicular assault and OVI, claim of ineffective assistance of counsel for advising defendant to plead guilty rather than no contest is without merit since whether defendant pled guilty or no contest, she had no right to appeal the court's decision granting state's motion in limine of the inadmissibility of a defense expert's testimony and report, and thus defendant incurred no prejudice.

**Search.** State v. Howell, 2021-Ohio-1417 | 5th Appellate District | 4/22/21 In a conviction by plea of drug offenses, denial of motion to suppress was not error where there was probable cause to arrest defendant for having a weapon under disability since officers had probable cause to believe that defendant had knowledge that a handgun was in his house that his son had displayed in a video, and thus drugs found on defendant during a search incident to his arrest for the weapon disability offense were not subject to suppression.

**Plea withdrawal.** State v. Harris, 2021-Ohio-1431 | 2nd Appellate District | 4/23/21 In a conviction by plea of failure to comply, denial of post-sentence motion to withdraw plea without a

hearing was error since plea was not validly made where the trial court completely failed to comply with Crim.R. 11(C)(2)(a) by not advising defendant of the maximum possible penalty during the plea colloquy, and a signed written plea form is not a cure for the court's complete failure to orally advise defendant about the maximum possible penalty during the plea colloquy.

**Impaired driving.** State v. Hamilton, 2021-Ohio-1421 | 1st Appellate District | 4/23/21 In a conviction of OVI, R.C. 4511.19(A)(1)(a), defendant's right to due process was not violated by officer not having defendant perform field sobriety tests within view of the police cruiser camera since there is no requirement that an officer do so, and there was no showing that any existing evidence was not preserved.

**Post-conviction relief.** State v. Roberson, 2021-Ohio-1422 | 1st Appellate District | 4/23/21 Following a 2016 conviction of, inter alia, attempted felonious assault and release from prison with post-release control and 2019 conviction of, inter alia, theft, appeal of denial of pro se "Motion to Vacate Void Judicial Sanction," treated as a petition for post-conviction relief, is dismissed since the trial court lacked jurisdiction where claim that prison sentence imposed for violation of post-release control in the 2016 conviction was void did not seek relief based on a constitutional violation and, since the trial court had no jurisdiction, the court of appeals had no jurisdiction to review.

**Sex offender registration.** State v. Alltop, 2021-Ohio-1426 | 2nd Appellate District | 4/23/21 Conviction of failure to register as a sex offender was not against the weight of evidence where defendant failed to register as required by R.C. 2950.06(B)(3) and the sheriff sent the R.C. 2950.06(G)(1) required written warning, but defendant failed to respond within the requisite seven-day period, the fact that the letter did not reach defendant until shortly before he was arrested does not mean the statutory requirements were not fulfilled by the state.

**Sealing.** State v. Gaines, 2021-Ohio-1439 | 6th Appellate District | 4/23/21 Denial of application to seal record of conviction of fourth-degree felony burglary was not error where, although applicant was an eligible offender and the trial court found that he had been sufficiently rehabilitated,

## Criminal Law (continued)

R.C. 2953.32(B), the circumstances surrounding the offense, including the display of a weapon at his ex-wife's boyfriend and the interest of neighbors or a future romantic partner of the ex-wife supported a substantial police and public interest in maintaining records.

**Violation of a civil protection order.** State v. Wilson, 2021-Ohio-1444 | 6th Appellate District | 4/23/21 Following a grant of ex parte five-year civil protection order (CPO) while appellant was in jail for violation of a prior ex parte CPO and remained in custody on other charges for almost two years, and after release he was alleged to have contacted protected person, resulting in a conviction of a violation of R.C. 2919.27, judgment is reversed where there was no showing of actual or constructive service of the CPO on appellant.

**Search.** State v. Pooler, 2021-Ohio-1432 | 2nd Appellate District | 4/23/21 In a conviction by plea of improper handling of a firearm in a motor vehicle, denial of motion to suppress the firearm found during a search where defendant consented to the search of his vehicle during a traffic stop, and there is no evidence suggesting defendant was under duress or that police engaged in any coercive conduct.

**Post-conviction relief.** State v. Sellars, 2021-Ohio-1433 | 2nd Appellate District | 4/23/21 Following a conviction in two consolidated cases by plea of, inter alia, multiple counts of burglary that was affirmed, denial of two petitions for post-conviction relief without a hearing was not error where claims of ineffective assistance of the trial counsel in not seeking a dismissal on speedy trial grounds and that his counsel promised him a lesser sentence than he received could have been raised on direct appeal, and thus claims are barred by res judicata.

**Competency.** State v. Johnson, 2021-Ohio-1441 | 6th Appellate District | 4/23/21 In a conviction by plea of, inter alia, burglary, the trial court did not err in not ordering a competency hearing where the record does not contain sufficient indicia of incompetence to require an inquiry where defendant was a full, active and rational participant during the plea proceedings, despite her allegations that she was placed on "at least four psychiatric medications at jail," and she indicated she was "unstable" prior to receiving those medications,

but during extended plea colloquy, she stated that she was "stable."

**Plea.** State v. Krajnik, 2021-Ohio-1442 | 6th Appellate District | 4/23/21 In a conviction by plea in multiple cases of, inter alia, theft, plea was validly made since by pleading guilty, defendant waived indictment by the grand jury in strict compliance with the requirements in Crim.R. 7(A) and in R.C. 2941.021 by verbally waiving prosecution by indictment both before and after the court advised him of the nature of the charges against him and of his rights under the constitution.

**Impaired driving.** State v. Watkins, 2021-Ohio-1443 | 6th Appellate District | 4/23/21 In a conviction by plea of OVI, the trial court erred in denying motion to suppress the results of field sobriety and breath-alcohol tests where trooper's testimony of an unspecified odor of alcoholic beverages from defendant, her glassy and bloodshot eyes that trooper observed in the middle of the night when defendant came to post to pick up a person arrested for OVI, and defendant's admission to drinking one alcoholic beverage seven hours earlier did not provide trooper with reasonable, articulable suspicion to perform field sobriety and breath tests.

**Post-conviction relief.** State v. Murrill, 2021-Ohio-1449 | 12th Appellate District | 4/26/21 Following a 2018 conviction by plea of sex and kidnapping offenses involving minors, the trial court did not err in denying petition for post-conviction relief based on alleged potential judicial bias where, although that judge in a subsequent case of a different defendant in a sex offense case recused himself because a member of his family "had been the victim of a similar crime which may have impacted the court's original sentencing determination," appellant failed to demonstrate bias.

**Post-conviction relief.** State v. Little, 2021-Ohio-1446 | 9th Appellate District | 4/26/21 Following a 2009 conviction of, inter alia, aggravated murder that was affirmed on appeal, denial of 2020 pro se "Motion to Correct Void Sentence; Failure to Properly Impose Post-Release Control Pursuant to R.C. 2929.191," treated as a successive, untimely filed petition for post-conviction relief was not error since appellant failed to meet the R.C. 2953.23(A)(1) requirements for the filing of an untimely or successive petition, sentence was not void and challenge is also barred by res judicata, Harper.

**Murder.** State v. Simko, 2021-Ohio-1447 | 9th Appellate District | 4/26/21 In a bench conviction of, inter alia, aggravated murder, the trial court did not shift the burden of proof to defendant to prove that someone other than defendant committed the murder where court addressed and rejected defendant's theories that her husband's death was the result of a stranger-robber or assassin since the court specifically determined the state proved defendant's guilt by proof beyond a reasonable doubt.

**Obstructing official business.** State v. Zupancic, 2021-Ohio-1448 | 9th Appellate District | 4/26/21 Conviction of obstructing official business, R.C. 2921.31(A), was supported by sufficient evidence since defendant's purposeful hiding to evade the police in serving a warrant on him is an affirmative act that impeded or hampered the officers in their duties and, once defendant was found, he admitted to officers that he heard them, knew they were looking for him because of his warrant, and hid to elude them.

**Jury instruction.** State v. Lavean, 2021-Ohio-1456 | 11th Appellate District | 4/26/21 In a conviction of, inter alia, felonious assault, the trial court did not err by denying defendant's request for a jury instruction for aggravated assault as an inferior offense of felonious assault since it was not warranted based on the facts in evidence where, under the evidence presented, victim's use of a derogatory term to defendant was not sufficient provocation to raise a sudden passion or fit of rage in an ordinary person.

**Sentencing.** State v. Foster, 2021-Ohio-1454 | 3rd Appellate District | 4/26/21 In a conviction by plea of engaging in a pattern of corrupt activity, the trial court did not err by sentencing defendant pursuant to the Regan Tokes Act since under the language of R.C. 2929.144(A), the trial court correctly determined that defendant's conviction for engaging in a pattern of corrupt activity was a qualifying second-degree felony subject to indefinite sentencing under R.C. 2929.14(A)(2)(a).

**Retaliation.** State v. Richey, 2021-Ohio-1461 | 3rd Appellate District | 4/26/21 In a conviction of retaliation, R.C. 2921.05(A), for threats made against a former prosecutor who tried an aggravated murder case against defendant, admission of other acts evidence was not error where the

evidence was introduced to establish why defendant issued threats and who he was threatening and not to show his propensity to issue threats, and the danger of unfair prejudice did not substantially outweigh the probative value of the other acts evidence, Evid.R. 404(B).

**Post-conviction relief.** State v. Bear, 2021-Ohio-1539 | 4th Appellate District | 4/26/21 Following a 2017 conviction by guilty pleas of rape that was not appealed and denial of 2017 petition for post-conviction relief that was affirmed, denial of 2020 pro se "Motion to Vacate or Set Aside Judgment," treated as a petition for post-conviction relief, was not error where untimely filed, and there is no merit to claim that the manner the charges were brought against appellant resulted in statutory and rule violations constituting constitutional violations; also, there is no jurisdictional defect insulating claim from the application of res judicata.

**Post-conviction relief.** State v. Jackson, 2021-Ohio-1472 | 5th Appellate District | 4/26/21 Following a 2005 conviction of, inter alia, aggravated robbery and on appeal conviction was affirmed but remanded for re-sentencing and affirmed, denial of 2020 pro se "Motion for Ineffective Assistance of Counsel" was not error since it is an untimely filed petition for post-conviction relief, and appellant failed to demonstrate that he was unavoidably prevented from discovering the facts necessary for the claim for relief, R.C. 2953.23(A); challenge is also barred by res judicata.

**Sealing.** State v. Wallace, 2021-Ohio-1481 | 4th Appellate District | 4/27/21 Denial of application to seal records of one count of theft and two counts of forgery was not error where, although appellant was an eligible offender, he had used his fiduciary position with a union to commit the offenses, and the government's need to maintain the records outweighed appellant's interest in having them sealed since he did not offer any evidence about the requirements for becoming a licensed counselor or how he satisfied them or would satisfy them if the court granted his application, R.C. 2953.32(C)(2).

**Search.** State v. Schubert, 2021-Ohio-1478 | 5th Appellate District | 4/28/21 In a conviction by plea of, inter alia, aggravated vehicular homicide, denial of motion to suppress blood draw

results was not error where the blood test results were admissible since the state proved substantial compliance with Ohio Adm. Code 3701-53-05 because, although there was no antiseptic used in the blood draw, there was expert testimony the requirement related only to the detection of alcohol and would not affect the results of the drug test on appellant's blood, and thus any error was de minimis.

**Jury instruction.** State v. New Bey, 2021-Ohio-1482 | 8th Appellate District | 4/29/21 In a conviction of child endangering and domestic violence, the trial court did not commit plain error by not giving a jury instruction concerning accomplice co-defendant testimony under R.C. 2923.03(D) since the accomplice's testimony was corroborated by other evidence introduced at trial, the jury was aware from the accomplice's testimony that she benefitted from agreeing to testify against defendant, and the jury was instructed regarding its duty to evaluate the credibility of the witnesses.

**Pre-indictment delay.** State v. Danzy, 2021-Ohio-1483 | 8th Appellate District | 4/29/21 In a conviction of rape, denial of motion to dismiss for pre-indictment delay was not error where the reasons for the delay in indicting defendant were for investigative purposes since the record demonstrates that a rape-kit examination was conducted in 2001, but there is no evidence that the state was in possession of appellant's DNA in 2001 or that he was a suspect at that time, and it was not until 2016 that the state discovered a potential DNA match.

**Prosecutorial misconduct.** State v. Hawkins, 2021-Ohio-1484 | 8th Appellate District | 4/29/21 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(A), the trial court did not err by not declaring a mistrial for prosecutorial misconduct where the prosecutor's comments during closing arguments did not deprive defendant of a fair trial since prosecutor may comment on a defendant's failure to offer evidence in support of state's case, the prosecutor is permitted to respond to defense counsel's attacks on a witness' credibility, and the prosecutor's comments on defense attorneys' trial tactics are not to be viewed in isolation.

**Self-defense.** State v. Davidson-Dixon, 2021-Ohio-1485 | 8th Appellate District | 4/29/21 In a conviction of aggravated assault, the trial court erred by not

instructing the jury on self-defense, R.C. 2901.05(B)(1), since sufficient evidence was presented that tends to show that defendant acted in self-defense, and the court improperly assumed jury's role by making its own evaluation of the weight of the evidence and the witnesses' credibility in deciding not to give the self-defense instruction and instead to give an aggravated assault instruction in addition to the charged felonious assault instruction.

**Fine.** Cleveland v. Jaber, 2021-Ohio-1486 | 8th Appellate District | 4/29/21 In a conviction by plea of failing to comply with a notice of housing code violations, imposition of a \$13,000 fine was error since the statutory maximum fine for a single, first-degree misdemeanor is \$1,000, R.C. 2929.28(2)(a)(i), and neither res judicata nor law of the case apply; remanded for re-sentencing to impose a fine of no more than \$1,000.

**Post-conviction relief.** State v. Atahiya, 2021-Ohio-1488 | 8th Appellate District | 4/29/21 Following a 2013 conviction by plea of, inter alia, attempted murder, denial of motion to withdraw plea and/or petition for post-conviction relief was not error where petition was untimely filed and did not meet the R.C. 2953.23 requirements for the filing of an untimely filed petition since appellant knew of the alleged exculpatory evidence prior to his plea, and denial of Crim.R. 32(C) motion to withdraw plea was not error where claim of ineffective assistance of counsel is supported only by appellant's self-serving affidavit.

**Post-conviction relief.** State v. Freeman, 2021-Ohio-1489 | 8th Appellate District | 4/29/21 Following a 2001 conviction of, inter alia, aggravated murder that was affirmed, denial of pro se petition for post-conviction relief was not error where petition was untimely filed, R.C. 2953.21(A)(2), and failed to comply with both conditions set forth in R.C. 2953.23(A)(1) for filing of an untimely petition, and claims are also barred by res judicata.

**Appeal.** State v. Black, 2021-Ohio-1490 | 8th Appellate District | 4/29/21 Following a 2015 conviction by plea of, inter alia, two counts of aggravated robbery, appeal of denial of 2020 pro se "Motion For Sentencing" is dismissed since the appeal challenges the guilty plea that would require the 2015 conviction to be set aside, and the court of appeals lacks jurisdiction to consider a challenge to appellant's conviction that

was journalized as a final order in 2015 because he did not timely appeal that judgment, App.R. 4(A).

**Restitution.** State v. Fitz, 2021-Ohio-1497 | 8th Appellate District | 4/29/21 In a conviction by plea of committing workers' compensation fraud, R.C. 2913.48(A)(7), imposition of restitution order of \$965,235.28 is affirmed since appellant failed to object at the trial to the restitution order and does not argue plain error, App.R. 12(A)(2), and moreover, appellant has provided no basis to conclude that the special investigator's recitation of the amount of economic loss suffered is not competent, credible evidence from which the court could determine restitution to a reasonable degree of certainty.

**Mistrial.** State v. Poindexter, 2021-Ohio-1499 | 10th Appellate District | 4/29/21 In a conviction of, inter alia, aggravated murder, the trial court did not err in denying defendant's motion for mistrial where officer testified that defendant was identified by a participant in a shooting resulting in the victim's death, but the participant refused to testify at the trial since, even assuming the admission of officer's testimony was erroneous, defendant failed to show that the record affirmatively demonstrated that he was prejudiced by the testimony or was prevented from having a fair trial in view of, inter alia, other eyewitnesses' testimony identifying him, Crim.R. 33(E) (5).

**Evidence.** State v. Burns, 2021-Ohio-1500 | 10th Appellate District | 4/29/21 In a conviction of, inter alia, domestic violence, admission of other acts evidence was not prejudicial where victim testified in response to one of state's questions that she stayed at a women's shelter for a short period since the jury was already aware, based on the stipulated judgment entries, that defendant had been previously convicted of domestic violence, no testimony described the specific acts supporting that conviction, the state abandoned its line of questioning once the trial court issued its sidebar ruling, and any error was harmless, Evid.R. 404(B).

**Plea withdrawal.** State v. Garst, 2021-Ohio-1516 | 2nd Appellate District | 4/30/21 Following a 2010 conviction by plea of, inter alia, murder, the trial court's denial of 2019 and 2020 motions

to withdraw plea was not error since appellant's claim that subsequent application of Sierah's Law to him breaching his plea agreement is without merit since this district's court of appeals has found Sierah's Law constitutional as remedial in nature and a collateral consequence of the offender's criminal acts, rather than a form of punishment per se, Hubbard.

**Post-conviction relief.** State v. Ramey, 2021-Ohio-1522 | 2nd Appellate District | 4/30/21 Following a 2014 conviction of, inter alia, complicity to felonious assault and weapon offenses that was affirmed, denial of 2019 petition for post-conviction relief was not error where, although victim recanted his testimony identifying appellant as involved in a drive-by shooting at victim, there was ample evidence from which the jury could have found appellant guilty of the charged offenses, and thus appellant did not show by clear and convincing evidence that no reasonable factfinder would have found him guilty of the convicted offenses, R.C. 2953.23(A)(1) (b).

**Discovery.** State v. Barber, 2021-Ohio-1506 | 1st Appellate District | 4/30/21 Conviction of murder met the sufficiency and weight of evidence standards where there was eyewitness and video evidence sufficient to identify defendant as the person who shot and killed the victim and, although the state did not comply with the Crim.R. 16(D) nondisclosure certification by using boilerplate language with no relation to this case, the defect was cured during the hearing provided for in Crim.R. 16(F), and defendant was not prejudiced where he received the names 10 months before the trial.

**Sexual imposition.** State v. Cole-Walker, 2021-Ohio-1507 | 1st Appellate District | 4/30/21 In a bench conviction of sexual imposition, R.C. 2907.06(A) (1), there was sufficient corroboration of victim's testimony as required by R.C. 2907.06(B) in light of victim's testimony of the time and circumstances of incident, including her report to police, evidence that she was at the place that she reported the incident to have occurred, and her prompt reporting of the incident to police, defendant concedes that her testimony, if believed, was sufficient, and the court did not lose its way in its determination of victim's credibility.

**Sentencing.** State v. Compton, 2021-Ohio-1513 | 2nd Appellate District | 4/30/21 In a conviction by plea of aggravated robbery, R.C. 2921.31(A), imposition of indefinite prison term of a minimum term of four years and a maximum term of six years pursuant to the Reagan Tokes Act, R.C. 2929.144 and related statutes was not error since the Act does not violate the separation-of-powers doctrine nor the right to due process, Ferguson.

**Sentencing.** State v. Fletcher, 2021-Ohio-1515 | 2nd Appellate District | 4/30/21 In a conviction by plea of four counts of aggravated robbery, imposition of an aggregate minimum prison sentence of six years with a potential maximum sentence of 7.5 years pursuant to the Reagan Tokes Act did not make the trial court's compliance with Crim.R. 11 impossible since the court applied the appropriate advisements concerning the sentence under the Act; however, the trial court judgment entries did incorrectly reflect guilty pleas since defendant pled no contest.

**Ineffective assistance.** State v. Lammers, 2021-Ohio-1518 | 2nd Appellate District | 4/30/21 In a conviction of attempted leaving the scene of an accident, a second-degree misdemeanor, appellant received ineffective assistance by defense counsel's failure to assert that appellant's speedy trial rights had been violated since the trial court's sua sponte continuance was unreasonable; the trial court also erred by finding appellant guilty since she neither had a trial nor entered a no contest plea.

**New trial.** State v. McNeal, 2021-Ohio-1520 | 2nd Appellate District | 4/30/21 Following a 2016 conviction of rape of a substantially impaired person that was affirmed, denial of a 2020 motion for leave to file a delayed motion for a new trial was not error since motion for leave was untimely because appellant was aware of victim's blood and alcohol tests at the time of the trial, the evidence was not new evidence and thus he could not establish that he was unavoidably prevented from discovering the evidence, and significant testimony about the victim's substantial impairment was presented at the trial.

**New trial.** State v. Reid, 2021-Ohio-1523 | 2nd Appellate District | 4/30/21 Following a 2002 conviction of, inter alia, murder that was affirmed, denial of 2020

pro se motion for leave to file a motion for a new trial was not error where the evidence relied on to show that the state withheld 9-1-1 recordings and records involving a motor vehicle that appellant alleged was in the area at the time of the murder and trial counsel's alleged failure to call favorable eyewitnesses were not newly discovered evidence since claims could have been raised in the direct appeal, and thus claims are barred by res judicata.

**Search.** State v. Kendall, 2021-Ohio-1551 | 6th Appellate District | 4/30/21 In a conviction of drug offenses arising out of a traffic stop and a subsequent incident in which defendant stopped vehicle he was driving and fled from police, trial court did not err in denying motion to suppress where officers saw marijuana in plain view during a traffic stop and found drug paraphernalia during inventory of vehicle that appellant fled from during a subsequent traffic stop; however, imposition of costs of supervision and appointed counsel is vacated where the trial court failed to find that defendant had the present or future ability to pay.

**Complicity.** State v. Duke, 2021-Ohio-1552 | 6th Appellate District | 4/30/21 Bench conviction of complicity to second-degree felony burglary and first-degree misdemeanor petty theft met the sufficiency and weight of evidence standards since defendant's overt act of assistance of driving a getaway car is sufficient to show that he aided and abetted in the offenses, and principal's status as a trespasser satisfied an element of the offense and is imputed to defendant, and the trial court did not clearly lose its way in making its credibility determinations.

**Impaired driving.** State v. Farrell, 2021-Ohio-1554 | 6th Appellate District | 4/30/21 In a conviction by plea of municipal code misdemeanor OVI, equivalent to R.C. 4511.19(A)(1)(d), denial of motion to suppress the results of a breathalyzer test was error since the evidence presented by the state did not demonstrate that it substantially complied with Ohio Adm. Code 3701-53-04 requirement for the traceability of the dry gas used in the test.

**Plea withdrawal.** State v. Palafox, 2021-Ohio-1550 | 6th Appellate District | 4/30/21 Following a 2016 conviction by plea of attempted aggravated menacing, R.C. 2903.21, denial of 2018 motion to withdraw plea was error since the record

shows there is no dispute that appellant is not a U.S. citizen and that the trial court was required to give the R.C. 2943.031(A) advisement, but completely failed to do so, and appellant met the four-part showing required under R.C. 2943.031(D); also, appeal is not moot, even though appellant has served his sentence since his immigration status is a collateral legal consequence of his criminal case.

**Plea withdrawal.** State v. Koon, 2021-Ohio-1561 | 5th Appellate District | 4/30/21 Following a 2018 conviction by plea of, inter alia, trafficking in marijuana and denial of 2019 pro se motion to withdraw plea that was appealed and dismissed for failure to prosecute, denial of subsequent 2019 pro se motion to withdraw plea was not error since appellant's claim that the state agreed in plea agreement not to pursue civil forfeiture of property is barred by res judicata since the same claim was raised in the first motion to withdraw plea that was decided adversely to him.

**Indictment.** State v. Savage, 2021-Ohio-1549 | 6th Appellate District | 4/30/21 In a conviction by plea of, inter alia, two counts of involuntary manslaughter, defendant validly waived prosecution by indictment on the record by his Alford plea to the charges that waived his right to contest any non-jurisdictional defects that occurred before the plea was entered; also, challenge to the Reagan Tokes Act is not ripe for review, Velliquette.

**Jury instruction.** State v. Amison, 2021-Ohio-153 | 12th Appellate District | 5/3/21 In a conviction of murder and felonious assault, the trial court did not err in not giving an instruction on voluntary manslaughter where the records contained insufficient evidence of any provocative acts by the victim at the time of the shooting since an earlier confrontation initiated by defendant with the victim had occurred eight days earlier, and victim was walking with a friend on a public street and attempted to flee from defendant before being shot.

**Aggravated robbery.** State v. Dumas, 2021-Ohio-1534 | 9th Appellate District | 5/3/21 Conviction of aggravated robbery met the sufficiency and weight of evidence standards where individuals present during a marijuana transaction testified that defendant was the person who displayed a gun and demanded marijuana that he allegedly was interested in buying to be given

to him and, although there were some inconsistencies in the testimony of who were in the residence where the robbery occurred, all but defendant testified that defendant took the marijuana at gunpoint and credibility issues were for the trier of fact.

**Sexual imposition.** State v. Pineda, 2021-Ohio-1540 | 11th Appellate District | 5/3/21 Conviction of, inter alia, sexual imposition, met the sufficiency and weight of evidence standards where claim that the state failed to present corroborating evidence as required by R.C. 2907.06(B) is without merit since the state presented "slight circumstances or evidence that tends to support" the victim's testimony of sexual imposition, and the inconsistencies in the victim's version of the events do not render her testimony completely incredible; also, the state met the sufficiency and weight of evidence standards for convictions of domestic violence and obstructing official business.

**Appeal.** State v. Weber, 2021-Ohio-1545 | 11th Appellate District | 5/3/21 In a prosecution of assault, appeal of denial of pro se "Appeal to Denial of Interstate Agreement on Detainers Act by Law" is dismissed by the court of appeals for lack of a final appealable order since there is no basis for appeal because there is no sentence that constitutes a judgment or a final order amounting to a disposition of the cause, R.C. 2505.02 and Chamberlain.

**Plea.** State v. Mallory, 2021-Ohio-1542 | 11th Appellate District | 5/3/21 In a conviction by plea of, inter alia, aggravated robbery, claim that the trial court did not comply with Crim.R. 11(C)(2)(c) is without merit where, although the court informed defendant that he had the right to "a trial" instead of "a jury trial," the court complied with Crim.R. 11(C)(2)(a) by expressly informing him that the state would have to prove the elements of each of the three offenses to which he pled guilty "by proof beyond a reasonable doubt to the unanimous satisfaction of a jury."

**Aggravated vehicular homicide.** State v. Rollison, 2021-Ohio-1556 | 3rd Appellate District | 5/3/21 Conviction of aggravated vehicular homicide, R.C. 2903.06(A)(2)(a), met the sufficiency and weight of evidence standards where there was sufficient circumstantial evidence presented that defendant acted recklessly by disregarding

## Criminal Law (continued)

a substantial and unjustifiable risk, including eyewitness testimony that defendant was driving erratically, his ability to react to the road conditions was greatly compromised by the nighttime conditions, the rain, the wet pavement and his driving at a high rate of speed.

**Mandamus.** State ex rel. Peoples v. O'Shaughnessy, 2021-Ohio-1572 | Supreme Court of Ohio | 5/6/21 In inmate's pro se mandamus action to compel respondents to transfer him pursuant to R.C. 2953.13 from the correctional center to the county jail based on the court of appeals' remand for re-sentencing on a R.C. 2941.146 firearm specification to correct sentence to the statutorily mandated five years rather than six years that had been imposed, dismissal of action as moot by the court of appeals is affirmed since the sentence was corrected prior to relator's filing of this action and returning relator to the county jail would be a vain act.

**Suppression.** State v. Shurelds, 2021-Ohio-1560 | 3rd Appellate District | 5/3/21 In a conviction by plea of, inter alia, aggravated robbery, denial of motion to suppress was not error since the claim that law enforcement used improperly coercive tactics in an alleged victim's interview and that these coercive tactics "destroyed" the victim's credibility as a potential witness for either party and violated defendant's right to a fair trial is without merit since appellant provided no indication that any admonitions or "threats" substantially interfered with statements that the victim made during the interview or whether he would have testified if a trial had been held.

**Appeal.** State v. Cutright, 2021-Ohio-1582 | 4th Appellate District | 5/3/21 Appeal of conviction of felonious assault and endangering children is dismissed sua sponte for lack of a final appealable order since the trial court failed to dispose of one of the two endangering children counts and no journal entry appears in the record resolving it, R.C. 2505.02.

**Reopening.** Barnes v. Hanna, 2021-Ohio-1588 | 8th Appellate District | 5/3/21 Application for re-opening appeal, App.R. 26(B), referencing both a civil case and criminal case, is denied since App.R. 26(B) applies only to appeals in criminal actions, and there was no appeal of the criminal conviction.

**Evidence.** State v. Lewis, 2021-Ohio-1575 | 9th Appellate District | 5/5/21 In a conviction of unlawful sexual conduct with a minor, R.C. 2907.04(B) (3), admission of other-acts evidence of sexual conduct with the victim was not error since the sexual conduct that defendant engaged in with the minor was admissible to show absence of mistake or accident where defendant claimed the sexual conduct was being performed on him by the minor as he was sleeping, but the minor testified about other similar sexual conduct that defendant had her engage in with him, Evid.R. 404(B), and the evidence was not unfairly prejudicial, Evid.R. 403(A).

**Sentencing.** State v. Slye, 2021-Ohio-1581 | 5th Appellate District | 5/5/21 In a conviction by plea of first-degree felony robbery, imposition of minimum prison term of eight years and an indefinite maximum prison term of 12 years, challenge to constitutionality of R.C. 2967.271 of the Reagan Tokes Act as violative of the separation of powers doctrine, the constitutional right to trial by jury and due process is not ripe for review since appellant has not yet been subject to the provisions that he challenges, Downard and Kibler.

**Menacing by stalking.** State v. Ketchum, 2021-Ohio-1583 | 8th Appellate District | 5/6/21 Conviction of two counts of menacing by stalking, R.C. 2903.211(A)(1), was error where indictment stated in two separate counts that defendant committed the offenses "on or about" a specific date, but the alleged victim unequivocally testified that defendant did not threaten her on the specific date alleged in the indictment and the other dates that state presented evidence were not listed in the indictment, and there is no indication the grand jury was presented any evidence as to the other dates.

**Plea.** State v. Kauffman, 2021-Ohio-1584 | 8th Appellate District | 5/6/21 In a conviction by plea of aggravated robbery and imposition of the agreed four-year prison sentence, plea of guilty was validly made where the trial court did not completely fail to comply with Crim.R. 11(C)(2)(b) by not giving the advisement concerning the effect of a guilty plea since appellant did not assert actual innocence at any time during the plea hearing, and he did not demonstrate prejudice where nothing in the record supports a conclusion that he would not otherwise have entered his plea.

**Contempt.** Cleveland v. Serrano, 2021-Ohio-1586 | 8th Appellate District | 5/6/21 In a conviction of attempted aggravated menacing and imposition of criminal contempt for subsequent violation of community control, the trial court erred by finding appellant guilty of criminal contempt for violating his community control sanctions since courts cannot charge offenders who violate the conditions of community control with criminal contempt, R.C. 2929.25(D) (2); also, a conviction in a separate contempt action was error since the court found appellant guilty without taking any evidence.

**Plea withdrawal.** State v. Glenn, 2021-Ohio-1587 | 8th Appellate District | 5/6/21 In appeal in consolidated cases of convictions by plea of, inter alia, aggravated burglary, denial of pro se pre-sentence motion to withdraw plea was not error where defendant was represented by highly competent counsel during the plea hearing and defendant stated during plea colloquy that he was satisfied with counsel, defendant was afforded a full and impartial hearing on his motion, with the court giving a full and fair consideration to the plea withdrawal request, and record demonstrates the motion was based on a change of heart.

**Miranda.** State v. York, 2021-Ohio-1591 | 8th Appellate District | 5/6/21 In a conviction of sexual battery, R.C. 2907.03(A)(2), denial of motion to suppress was not error where appellant failed to demonstrate any statements he made were involuntary, even if he was in custody, and he validly waived his Fifth Amendment rights where he claims that he was "tricked" by his probation officer into meeting the officers, but he failed to show that the interviewers used any coercive tactics while talking with him, any belief he had that his probation might be revoked would not be reasonable, and investigators never employed improper techniques when questioning him.

**Competency.** State v. McCain, 2021-Ohio-1605 | 2nd Appellate District | 5/7/21 In a conviction by plea of a drug and a forgery offense and admission of community control violations in two prior cases, plea was validly made where claim that appellant did not understand the constitutional rights he was waiving during his Crim.R. 11 colloquy is without merit since, although he had developmental and intellectual disabilities, the record of the plea



hearing demonstrates that he presented no incompetency.

**Plea.** State v. Coffman, 2021-Ohio-1601 | 2nd Appellate District | 5/7/21 In a conviction by plea of sexual offenses, plea was validly made and defense counsel did not provide ineffective assistance where, during the plea colloquy that fully complied with Crim.R. 11(C), defendant affirmed that he understood the consequences of his plea, that defense counsel had discussed the nature of the charges in the bill of information, and that he was "very much satisfied" with the legal advice he had been given, and claims of ineffective assistance not based on evidence in the record are to be raised in a petition for post-conviction relief.

**Mootness.** State v. Midlam, 2021-Ohio-1607 | 2nd Appellate District | 5/7/21 Following multiple convictions in Ohio and Indiana for aggravated robbery and drug offenses, appeal of denial of additional jail-time credit is dismissed as moot since, applying the jail-time credit that appellant has already received, he has completely served his sentence in this case, and that sentence has no bearing on his ultimate release date from prison in his other cases.

**Fines/Court costs.** State v. Moore, 2021-Ohio-1616 | 6th Appellate District | 5/7/21 Following a 2001 conviction of felony drug possession with the sentence including a mandatory \$10,000 fine and court costs that was affirmed, the trial court's grant of state's 2020 motions for revivor was not error because appellant's claim that grant of motions was barred by res judicata is without merit since revivor is not precluded by the dormant judgment limitations period in R.C. 2329.07 or the R.C. 2325.18(A) time limits when a judgment can be revived since the state had 20 years from the date of the issuance of the judgments from which to revive them and the trial court was not required to hold a full hearing on the motions.

**Aggravated drug possession.** State v. Jacobs, 2021-Ohio-1611 | 5th Appellate District | 5/7/21 Conviction of aggravated possession of drugs, R.C. 2925.11(A), met the sufficiency and weight of evidence standards where drugs were found on an auto's passenger seat where defendant was sitting, as well as a BB gun and scales in a bag on the car floor where he was sitting, constituting constructive possession, and the jury did

not lose its way in making its credibility determinations.

**Sentencing.** State v. Rottman, 2021-Ohio-1618 | 6th Appellate District | 5/7/21 In a conviction of felonious assault, R.C. 2903.11(A)(1) and (D), and imposition of an indeterminate prison sentence of a minimum of two years up to a maximum of three years, judgment is affirmed since appellant's challenge to the constitutionality of the indeterminate sentencing provisions of the Reagan Tokes Act, R.C. 2929.14(A)(1)(a) or (2)(a), was not raised in the trial court and appellant does not argue that the trial court committed plain error.

**Jail-time credit.** State v. Midlam, 2021-Ohio-1608 | 2nd Appellate District | 5/7/21 Following convictions in Ohio for aggravated robberies and in Indiana for drug offenses, denial of motion for jail-time credit was not error where, following appellant's completion of his Indiana sentence in 2014, he was returned to Ohio to serve his Ohio sentences and he is not entitled to jail-time credit for the time that he was held in pretrial confinement in Ohio while he was also serving a sentence on unrelated offenses in the Indiana case.

**Plea.** State v. Porter, 2021-Ohio-1617 | 6th Appellate District | 5/7/21 In a conviction by plea of felonious assault, R.C. 2903.11, in which the plea agreement contained an agreed-on term of incarceration that was repeated by the trial court during the plea colloquy, the trial court erred in imposing a greater sentence than was stated in the plea agreement since the court failed to inform defendant during the plea colloquy that it was not bound by the sentencing agreement between defendant and the state, Crim.R. 11(C) and (F).

**Speedy trial.** State v. Sanford, 2021-Ohio-1619 | 9th Appellate District | 5/10/21 Conviction by plea of, inter alia, aggravated vehicular homicide and OVI, arising out of the vehicle that defendant was driving colliding with the victim operating a motorcycle, denial of motion to dismiss on speedy trial grounds was error as to two counts, R.C. 2903.06(A)(2)(a) and 4511.19(A)(1)(a), since the conviction for those offenses was not dependent on the results of a toxicology report, no new or additional information became known later, nor did the charges result from different conduct.

**Traffic offense.** State v. McHugh, 2021-Ohio-1626 | 5th Appellate District | 5/10/21 Bench conviction of speeding was supported by sufficient evidence through trooper's specific testimony of her qualifications to operate the laser device used, of the propriety of the trooper's accuracy check of the laser device and its working condition, and of the propriety of the trooper's operation of the device in obtaining the reading on defendant's vehicle, and defendant's arguments concerning the officer's training and level of familiarity with the radar do not render the verdict contrary to the weight of evidence.

**Appeal.** State v. Martin, 2021-Ohio-1632 | 11th Appellate District | 5/10/21 In a conviction by plea of assault, appeal is dismissed for lack of a final appealable order since the judgment entry does not restate the fact of conviction, Crim.R. 32(C).

**Jail-time credit.** State v. Johnson, 2021-Ohio-1629 | 12th Appellate District | 5/10/21 Following a 2006 conviction by plea of, inter alia, receiving stolen property, denial of pro se successive motion for jail-time credit was not error since appellant failed to demonstrate that the error was not raised at the sentencing hearing as required by R.C. 2929.19(B)(2)(g)(iii) because he failed to provide a transcript of the sentencing hearing; also, claim is barred by res judicata since issue was previously raised and denied.

**Appeal.** State v. Welker, 2021-Ohio-1634 | 11th Appellate District | 5/10/21 In a conviction by plea of violating a protection order and menacing by stalking, appeal is dismissed as untimely filed, App.R. 4(A)(1).

**Sentencing.** State v. Hiles, 2021-Ohio-1622 | 3rd Appellate District | 5/10/21 In a conviction by plea of, inter alia, obstructing justice and involuntary manslaughter, where the victim died of a drug overdose, imposition of consecutive prison sentences for an aggregate term of 9 to 13 years was not error since first-degree felony involuntary manslaughter is a qualifying felony of the first degree as that term is defined by the Reagan Tokes Law, R.C. 2929.144 and 2929.14(A)(1)(a).

**Impaired driving.** State v. Martin-Paley, 2021-Ohio-1631 | 12th Appellate District | 5/10/21 Conviction of, inter alia, first-degree misdemeanor OVI, R.C. 4511.202, met the sufficiency and weight

## Criminal Law (continued)

of evidence standards where arresting officer testified that appellant told him that she had a medical condition and was taking medications, urine screen confirmed the presence of regulated substances, state's forensic toxicologist testified that substances found had common side effects of drowsiness, dizziness and confusion, and appellant's expert medical witness acknowledged that the medications he prescribed to appellant had these known side effects.

**Self-defense.** State v. King, 2021-Ohio-1636 | 5th Appellate District | 5/11/21 In a conviction of, inter alia, aggravated murder, R.C. 2903.01(A), sufficient evidence was presented demonstrating that appellant did not act in defense of another since, on the basis of the evidence presented, the jury could reasonably have concluded appellant had other means of defending his colleague besides the use of force and that appellant created the violent situation leading to the shooting, R.C. 2901.05; also, challenge to the Reagan Tokes Act is not ripe for review.

**Child endangering.** State v. Williams, 2021-Ohio-1639 | 10th Appellate District | 5/11/21 Bench conviction of 21 counts of child endangering, R.C. 2919.22(A), met the sufficiency and weight of evidence standards where testimony of state's witnesses and a recording of a chaotic, dangerous situation of a group of children whom defendant was in overall charge of on a daycare center playground was sufficient proof that the accused created a substantial risk to the safety of the children that violated a duty of care and protection, and a substantial risk of serious physical harm is not required to be proven.

**Expert testimony.** State v. White, 2021-Ohio-1644 | 1st Appellate District | 5/12/21 In a conviction of, inter alia, two counts of rape of two minors, R.C. 2907.02(A)(1), the trial court did not commit plain error by allowing state's medical expert to opine that victims were abused, based solely on one victim's disclosures to him, where the record reflects that doctor's opinion was also based on his review of the girls' statements to social workers and their records and emergency department medical records; however, sentences imposed were, in part, contrary to law, and action is remanded for re-sentencing.

**Discovery.** State v. Green, 2021-Ohio-1645 | 1st Appellate District | 5/12/21 In a conviction by plea of drug offenses, denial of motion to suppress was not error since the state did not act in bad faith by not preserving officer's cruiser video since officer testified that his cruiser's video would not have been materially exculpatory because it would not have captured the defendant's traffic offense that officer observed, and defendant did not demonstrate that the state acted in bad faith in not preserving the video.

## Disability Law

**Medicaid.** Clovernook Health Care Pavilion v. Dept. of Medicaid, 2021-Ohio-337 | 8th Appellate District | 2/5/21 In appeal of Ohio Department of Medicaid's (ODM) order that sought to recover certain alleged overpayments, trial court erred in affirming the order since R.C. 5164.57(A)(1) conditions ODM's authority to recover Medicaid overpayments on ODM's notification to provider within the requisite five-year period, compliance with the R.C. 5164.57(A)(1) notice requirement is mandatory, and ODM failed to comply with the notice requirement.

**Benefits.** Midkiff v. Ohio Dept. of Job & Family Serv., 2021-Ohio-479 | 5th Appellate District | 2/22/21 Denial of mother-caregiver's application with Ohio Department of Job and Family Services for homemaker/personal care benefits for her disabled daughter is affirmed where, although daughter moved into basement apartment in family home, she spent most of her time upstairs, mother spent majority of her time at family home caring for daughter, and therefore they have a shared living arrangement which is compensated at a lower rate than homemaker/personal care benefits, R.C. 119.12.

**Benefits.** State ex rel. Powell v. Ohio Pub. Emps. Retirement Sys., 2021-Ohio-920 | 10th Appellate District | 2/23/21 Petition for writ of mandamus to compel retirement system board to vacate its denial of relator's application for disability benefits is denied since magistrate identified the reports of two physicians, which constituted some evidence on which the board properly relied in denying relator's application, and the file reviews of the medical evidence conducted by medical review organization and another physician also constituted some evidence on which the board properly relied.

## Education Law

**Suspension.** Stanford v. Northmont City Schools, 2021-Ohio-87 | 2nd Appellate District | 3/19/21 In parents' appeal of son's suspension from school for having odor of drugs on his person, trial court did not err in affirming decision of school's appeal designee since any issues regarding son's suspension were moot because he transferred to another school and the matter is not of public or great general interest, the school's search of son was justified because of individualized suspicion of odor of drugs, student served his suspension and was allowed to complete missed work, and he did not suffer any delay or interruption in education.

**Immunity.** Cline v. Tecumseh Local Bd. of Edn., 2021-Ohio-1329 | 2nd Appellate District | 4/16/21 In parents' action for negligence against defendants-board of education employees for allowing children to ride school bus without permission, trial court did not err in granting defendants' motion to dismiss since defendants were entitled to statutory immunity, no exceptions applied to the facts, and defendants did not act with malicious purpose or bad faith; also, the facts alleged by parents did not support a claim for intentional infliction of emotional distress, Civ.R. 12(B)(6), R.C. 2744.02.

**Retirement benefits.** State ex rel. Anderson v. State Teachers Retirement Sys. Bd., 2021-Ohio-1378 | 10th Appellate District | 4/20/21 Petition for writ of mandamus to compel respondent-state teacher's retirement board to reinstate petitioner's retirement credit for two school years is denied where petitioner served as the statutorily-required superintendent of island school district for nominal compensation plus a full year of retirement benefits credit for each year of service, but for the two years at issue in which petitioner did not also hold other fully paid positions, his on-call service as island superintendent was not sufficient to establish that he was "of service" for all the days he and the district have claimed, and retirement board's interpretation of the statute and rules is entitled to deference, R.C. 2207.53 and Ohio Adm. Code 3307:1-2-01.

**Discrimination.** Pettay v. DeVry Univ., Inc., 2021-Ohio-1380 | 10th Appellate District | 4/20/21 In professor's age discrimination action against university for terminating his employment during a reduction in force (RIF), summary

judgment in favor of university was not error where professor's college had declining enrollment, his classes could be taught by other professors, his position did not impact accreditation, the university used a mathematical selection process to determine employees impacted by RIF, and statistics offered by professor did not consider independent variables and were insufficient to establish discrimination, R.C. 4112.02.

## Election Law

**Ballot language.** State ex rel. Walker v. LaRose, 2021-Ohio-825 | Supreme Court of Ohio | 3/17/21 Petition for writ of mandamus to compel secretary of state, board of elections and city to change ballot language of a local issue involving movement of municipal court into county court building or to strike the issue from the ballot in upcoming election is denied since neither the secretary of state nor the city is a proper respondent for the relief that relators seek and the board did not abuse its discretion where, *inter alia*, petitioners do not cite a statute that imposes a duty on the secretary of state to amend or strike ballot language for a local issue, and with regard to local issues, R.C. 3501.05(J) directs the attorney general only to review and approve ballot language as to form, which he did.

**Placing name on ballot.** State ex rel. Miller v. Hamilton Cty. Bd. of Elections, 2021-Ohio-831 | Supreme Court of Ohio | 3/18/21 Petition for writ of prohibition to bar board of elections from placing name of respondent on ballot as a candidate for mayor in upcoming election is denied where petitioner's argument that candidate's part-petitions did not meet city charter's requirements since they contained only unsworn circulator statements is without merit because candidate's part-petitions included circulator statements substantially in the form prescribed in the city charter.

**Ballot language.** State ex rel. Cincinnati Action for Hous. Now v. Hamilton Cty. Bd. of Elections, 2021-Ohio-1038 | Supreme Court of Ohio | 3/30/21 Petition for writ of mandamus to compel change of language of ballot for proposed city charter amendment regarding affordable-housing trust fund is denied as to respondents-city council and secretary of state since relators did not show that they have a clear legal duty to provide the relief sought, but petition

is granted regarding board of elections since the board erred in certifying ballot language stating that use of two potential funding sources for proposed fund would violate state law, such legal opinions constitute impermissible persuasive argument against proposed amendment, and the board is ordered to prepare and certify new ballot language, R.C. 3505.06(E), and to transmit the language to the secretary of state for final approval under R.C. 3501.11(V).

**Board of elections.** State ex rel. Lorain Cty. Democratic Party Executive Commt. v. LaRose, 2021-Ohio-1144 | Supreme Court of Ohio | 4/5/21 Petition for writ of mandamus to compel respondent-secretary of state to appoint an elector to county board of elections is denied since secretary of state's rejection of county executive committee's recommendation of an elector was not an abuse of discretion where the secretary of state concluded that evidence showed that recommended individual had used her county commissioner e-mail address to conduct campaign activities, R.C. 3501.07.

**Board of elections appointment.** State ex rel. Summit Cty. Republican Party Executive Commt. v. LaRose, 2021-Ohio-1464 | Supreme Court of Ohio | 4/27/21 Political party's petition for writ of mandamus to compel respondent-secretary of state to reappoint board member to county board of elections is granted since it was an abuse of discretion to reject appointment on the basis of concerns about overall performance of the board; respondent may not reject a recommendation for reasons unrelated to personal misconduct by the recommended appointee, and a determination of incompetence requires individualized evidence that incumbent or proposed board member engaged in personal misconduct or misbehavior, R.C. 3501.07.

**Initiative petition.** State ex rel. Gil-Llamas v. Hardin, 2021-Ohio-1508 | Supreme Court of Ohio | 4/29/21 In mandamus action to compel members of city council to place proposed ordinance on upcoming primary-election ballot, limited writ is granted to order council to find petition sufficient and to proceed with the process for an initiated ordinance under city charter; writ of mandamus is not granted to compel placement of petition on the ballot since a finding of sufficiency does

not automatically mean that proposed initiative goes on the ballot but triggers a requirement that council take further action, and even if council had found relators' petition sufficient, the proposed initiative would not necessarily go on the upcoming primary-election ballot.

## Employment Law

**Discrimination.** Coomer v. Opportunities for Ohioans with Disabilities, 2021-Ohio-1139 | Ohio Court of Claims | 2/1/21 In employee's action for disability discrimination and failure to accommodate against former employer after a change in schedule aggravated her disability and caused her work performance to suffer, judgment is rendered in favor of employee since employer knew about her disability and failed to provide the accommodations she requested, requested schedule change was reasonable, would not unduly burden defendant, and was the only accommodation that would allow employee to work; employer's failure to accommodate resulted in constructive discharge.

**Unemployment compensation.** Bill Jackson Roofing, Inc. v. Ohio Dept. of Job & Family Servs., 2021-Ohio-284 | 10th Appellate District | 2/2/21 In company's appeal of state department's classification of workers as covered employees rather than contractors, asserting that the review commission improperly applied the facts of the case or misconstrued the meaning of four factors under R.C. 4141.01(B)(2)(k), the judgment is reversed and remanded because of the insufficiency of the common pleas court's decision and judgment entry, not permitting the court of appeals to conclude that the common pleas court conducted its review as required pursuant to R.C. 4141.26(D)(2).

**Restrictive covenant.** Geloff v. R.C. Hemm's Glass Shops, Inc., 2021-Ohio-394 | 2nd Appellate District | 2/12/21 In employee's action against former employer seeking a declaration that non-competition and non-disclosure agreement was unenforceable, summary judgment in favor of employee was not error since the experience and skills employee gained while working for former employer did not qualify as trade secrets because they are common knowledge, employer failed to show that employee had possession of customer list, and the nature of employee's subsequent employment constituted ordinary competition and not unfair competition.

**Wrongful discharge.** Petras v. 3G Operating Co., 2021-Ohio-473 | 11th Appellate District | 2/22/21 In nurse's wrongful discharge action against employer-nursing home after she was discharged for twice directly contacting patients' physicians at night rather than using telemedicine protocol, it was not error to grant summary judgment to employer where nurse's argument is meritless that her discharge for her actions while engaged in the practice of nursing was a violation of public policy, R.C. 4723.01, since that provision does not state a public policy against terminating a nurse for failing to follow the chain of command, nurse failed to cite authority to support her argument, and employer's procedures did not interfere with nurse's ability to give patient care.

**Investigation.** State ex rel. Youngstown Professional Firefighters IAFF Local 312 v. Youngstown, 2021-Ohio-539 | 7th Appellate District | 2/23/21 In firefighters union's action seeking to compel city to appoint an independent investigator to investigate complaint against fire chief and to issue discipline if warranted, petition for writ of mandamus is dismissed where, although relators have a clear legal right to an investigation under city ordinance, the plain and unambiguous language of the ordinance does not specify a clear legal right or clear legal duty to appoint an independent investigator, R.C. 2731.02.

**Discrimination.** Meggitt v. Ohio Dept. of Pub. Safety, 2021-Ohio-1140 | Ohio Court of Claims | 2/23/21 In action for age discrimination by constructively discharged employee who demonstrated that she is a member of a protected class and that she was clearly qualified for her position to establish a prima facie case, judgment is rendered in favor of employer since there is evidence that employee committed multiple violations of employer's policies, which resulted in justified discipline and ultimately a recommendation that she be terminated, R.C. 4112.14.

**Unemployment compensation.** Norgart v. Ohio Dept. of Job & Family Servs., 2021-Ohio-812 | 4th Appellate District | 3/10/21 Reversal of unemployment compensation commission's decision that claimant did not qualify for unemployment compensation was error since claimant was employed by fast-food

restaurant when he quit that job for other employment; claimant's "working interview" and participation in two-day training period for which he was compensated constituted employment, and quitting that job without just cause disqualified him from receiving benefits and required him to repay benefits he did receive, R.C. Ch. 4141.

**Retaliation.** Creveling v. Lakepark Industries, Inc., 2021-Ohio-764 | 6th Appellate District | 3/12/21 In employee's workers' compensation (WC) retaliation action against employer for terminating his employment when he violated employee corrective action after recovering from a WC injury, summary judgment in favor of employer was not error since returning to work after WC disability is not a protected activity under R.C. 4123.90, isolated derogatory comments made to employee on his return to work were insufficient to establish a causal link between WC claim and termination, and employee signed the corrective action form without compulsion.

**Discrimination.** Moody v. Ohio Dept. of Mental Health & Addiction Servs., 2021-Ohio-1525 | Ohio Court of Claims | 3/15/21 In employee's action against his former employer alleging race discrimination after he was suspended for being late to work, employer's motion for summary judgment is granted since the reprimands and paid suspensions issued to employee do not constitute materially adverse employment actions as a matter of law, employee failed to show that he was constructively discharged when he resigned, and defendant followed a progressive discipline grid when it issued discipline and therefore it was not a pretext for discrimination.

**Discrimination.** Ksiazek v. Columbiana Cty. Port Auth., 2021-Ohio-1267 | 7th Appellate District | 3/22/21 In terminated employee's age discrimination and retaliation action against former employer, trial court did not err in granting summary judgment in favor of employer where her duties were absorbed by multiple employees, the reason for discharge was not a pretext because it was the result of accumulation of many incidents, and employee failed to demonstrate retaliation because her allegations do not qualify as protected activity under R.C. 4112(l) and 4112.02.

**Wrongful termination/Contract.** Evans v. Shawnee Twp. Bd. of Trustees, 2021-Ohio-1003 | 3rd Appellate District | 3/29/21 In employee's wrongful termination and breach of contract action seeking damages from township following his discharge as a firefighter, summary judgment in favor of township was not error where employment was governed by R.C. 505.38, employee was a probationary employee and did not have protected-property interest in his employment until after completion of his probationary period, collective bargaining agreement provides for termination during probationary period without rights to appeal, and employee failed to show express contract with township.

**Discrimination.** Osborne v. Ohio Reformatory for Women, 2021-Ohio-1036 | 10th Appellate District | 3/30/21 In terminated employee's action for reverse race discrimination, it was not error to grant summary judgment to employer on reasoning that employee did not establish a prima facie case of reverse race discrimination, R.C. 4112.02, where, inter alia, employee was a probationary employee, having just been promoted to her current position, so progressive discipline was not necessary, employee left her assigned unit for several hours without signing log-book to leave, and employee did not present evidence that employer treated her disparately from similarly situated minority employees, Pohmer.

**Promotion exam.** State ex rel. Neal v. Cincinnati, 2021-Ohio-1276 | 1st Appellate District | 4/14/21 In firefighter's challenge to conditions of his competitive exam on which he did not score well enough to obtain a promotion to fire captain where he was subjected to assessors' cell phone interruptions and other distractions, trial court erred in granting firefighter's petition for writ of mandamus ordering the city to promote him, with back pay and attorney fees, since firefighter points to no statute or ordinance establishing a right or duty to be promoted to fire captain and mandamus is an extraordinary and narrow remedy.

**Compensation.** Heydinger v. Golden Giant, Inc., 2021-Ohio-1358 | 3rd Appellate District | 4/19/21 In employee's action against employer for payment of commissions due at conclusion of his employment, summary judgment in favor of employer was error as to one commission where the court relied on

incorrect information that made it appear that employee had admitted to not obtaining a signed contract or deposit, but employee testified that he had presented employer with a firm contract and deposit for the project in question, so there is a genuine issue of material fact on that issue.

**Discrimination.** Caldwell v. Niles City Schools, 2021-Ohio-1543 | 11th Appellate District | 5/3/21 In teacher's disability discrimination action against school for constructive discharge and failure to provide her with reasonable accommodations for her disability, trial court erred in granting summary judgment in favor of school where teacher made more than one request for additional accommodation, the school offered no alternative accommodation to allow teacher to continue working, and there is a genuine issue of material fact as to whether teacher voluntarily resigned or was constructively discharged, R.C. 4112.02(A) and 4112.99.

**Settlement agreement.** Green v. CDO Technologies, Inc., 2021-Ohio-1603 | 2nd Appellate District | 5/7/21 Following settlement of employee's underlying employment action against former employer, in employee's action for breach of settlement agreement, claiming that employer provided false statements about her to third parties with respect to her employment, trial court did not err in granting employer's motion to dismiss since employer's obligation to provide a positive letter of reference for employee did not create an unwritten obligation not to make negative statements about her, and employer provided all consideration set forth in settlement agreement.

**Retaliation.** Ra v. Swagelok Mfg. Co., L.L.C., 2021-Ohio-1657 | 8th Appellate District | 5/13/21 In terminated employee's action alleging retaliation in violation of R.C. 4112.02 and related claims, summary judgment for employer was not error since employee did not establish a prima facie claim of retaliation where employee was placed on associate improvement plan (AIP) because of her verbal altercation with supervisor, who did not have any involvement with sexual harassment complaints employee had made, and the record reflects that employee was recommended for termination in violation of her AIP after refusing to wear safety glasses on the shop floor.

## Estate Planning, Trust and Probate Law

**Custody.** In re E.G.C., 2021-Ohio-276 | 12th Appellate District | 2/1/21 Determination that father's consent was not necessary in the adoption of child by child's stepfather was error where the trial court found that the father did not have more than de minimis contact with the child for the year preceding the filing of the adoption action, but the court failed to rule on whether the failure to have contact was without justifiable cause, as required by R.C. 3107.07(A).

**Adoption.** In re Adoption of C.L.G., 2021-Ohio-402 | 4th Appellate District | 2/5/21 In stepfather's petition to adopt child, trial court erred in denying biological father's motion for appointment of counsel since indigent parents are entitled to appointed counsel in juvenile proceedings in which they face the loss of their parental rights, and indigent parents are also entitled to appointed counsel when they face the loss of parental rights in adoption proceedings in probate court, pursuant to equal protection clauses of the U.S. and Ohio Constitutions, In re Adoption of Y.E.F.

**Adoption.** In re D.L.C., 2021-Ohio-420 | 5th Appellate District | 2/12/21 In stepfather's petition for adoption of child, trial court did not err in finding that father's consent was not required where, although father had justifiable cause for his failure to have more than de minimis contact with child, he failed to provide maintenance and support of child during the year preceding filing of petition, and even though he was incarcerated, he could have provided at least a meager amount of support to satisfy the requirement of R.C. 3107.07(A).

**Trustee.** Filo v. Filo, 2021-Ohio-413 | 12th Appellate District | 2/16/21 In sister's action against brother, claiming undue influence over their father-decedent and breach of duties of trustee after father created new trust and will prior to his death, judgment for brother is affirmed where jury instructions regarding father's capacity to execute power of appointment covered both testamentary and contractual capacity, and although a fiduciary relationship existed between brother and father which raised presumption that gifts to brother were void, brother provided substantial credible evidence that father made decisions free from undue influence.

**Jurisdiction.** Love v. Love, 2021-Ohio-558 | 12th Appellate District | 2/22/21 In fraudulent transfer complaint filed in common pleas general division by executor of father's estate against executor's brother after cognitively-impaired father transferred real estate and bank account funds to brother, it was not error to deny brother's motion to dismiss where executor sought money damages rather than declaratory relief and therefore his fraud claims fell under general division's jurisdiction, and because the basis for claims occurred during decedent's lifetime and not after death, claims do not directly concern administration of decedent's estate.

**Will contest.** Allerton v. Burns, 2021-Ohio-500 | 5th Appellate District | 2/23/21 In plaintiffs' action against sister-executor of mother's estate contesting mother's will and alleging undue influence and lack of testamentary capacity, trial court did not err in granting summary judgment to executor since plaintiffs' affidavits do not point to any evidence that executor overpowered and subjugated the mind of the mother as to destroy her free agency and make mother conform to the will of executor, and monetary bequests added to new will resulted in a reduction in residue of estate gifted outright to executor.

**Appeal.** Neuman v. Vettori, 2021-Ohio-537 | 7th Appellate District | 2/24/21 In plaintiff-estate administrator's action against defendant, claiming concealment of cash assets belonging to decedent, resulting in judgment for plaintiff, trial court erred in not creating a record capable of review with respect to its assessment of prejudgment interest against defendant where the record does not specify whether R.C. 1343.03(A) or R.C. 1343.03(C) was used to assess prejudgment interest, and therefore determination cannot be made as to whether the assessment met statutory requirements.

**Appeal.** In re Pena, 2021-Ohio-531 | 6th Appellate District | 2/26/21 Appeal of orders ordering appellant to be temporarily detained following determination that there was probable cause to believe that appellant was a mentally ill person is dismissed as being moot since the case ended without an adjudication of mental illness when the probate court failed to hold a hearing under R.C. 5122.141(B) within five court days after the affidavit was filed; in a related proceeding in court in another

county, the probate court determined that there was not clear and convincing evidence that appellant was a mentally ill person and thus discharged her, R.C. 5122.141(C).

**Name change.** In re Name Change of Biggerstaff, 2021-Ohio-591 | 5th Appellate District | 3/4/21 Granting mother's application for name change of minor child following divorce was error since notice of hearing must be given to parent who has not consented to name change pursuant to R.C. 2717.01(B), and although mother knew father's address, there was attempt to serve father by certified mail, and therefore personal jurisdiction for him was not established.

**Appeal.** In re Estate of Brown, 2021-Ohio-655 | 11th Appellate District | 3/4/21 In siblings' action contesting their father's new will which named brother as executor, claiming that the will was invalid because witness signatures were not written in cursive, appeal of judgment admitting will to probate is dismissed for lack of a final appealable order since the challenge by siblings was not based on sister's removal as executor in previous will because it was not admitted to probate, R.C. 2505.02(B), and immediate appeal is not necessary to obtain appropriate relief.

**Due process.** Froelich v. Rogers, 2021-Ohio-604 | 2nd Appellate District | 3/5/21 In estate administrator's action seeking declaratory judgment to name decedent's heirs for purposes of asset distribution, the trial court erred in finding, without a hearing, that decedent was the biological father of two children whose paternity was established post-mortem since decedent's brother was denied due process by not being given a reasonable opportunity to contest the court's determination, and the court's sua sponte decision establishing paternity after death did not allow the parties to raise arguments concerning the statute of descent and distribution, R.C. 2105.06.

**Adoption.** In re Adoption of J.M.M., 2021-Ohio-775 | 2nd Appellate District | 3/15/21 In stepfather's petition to adopt children, trial court did not err in concluding that consent of father was necessary where there was conflicting evidence regarding father's contact with children during the period in question,

and father was justified in failing to provide more than de minimis contact because mother blocked father's ability to communicate through social media, mother denied paternal grandmother access to children to prevent her from allowing access to father, and father was concerned mother would alert law enforcement if he tried to visit.

**Attorney fees.** In re Estate of Cornell, 2021-Ohio-877 | 6th Appellate District | 3/19/21 In estate dispute where beneficiary-decedent's son requested review and correction of final orders of distribution, trial court erred in denying beneficiary's attorney's motion to reopen estate and consider his claim for incurred attorney fees where attorney handled administration of estate up through filing of complete inventory, he kept separate records of work performed on behalf of estate, beneficiary has standing because he has interest in the judgment, and executor failed to reject attorney's claim before estate was closed, so deadline did not begin to run, R.C. 2117.06(B).

**Adoption.** In re D.T.B., 2021-Ohio-1023 | 4th Appellate District | 3/23/21 In stepmother's petition for adoption of children, trial court erred in finding that mother's consent was not required and in denying her request for appointed counsel where in Y.E.F. the court held that indigent parents are entitled to appointed counsel in adoption proceedings because adoption is a state function that requires government action to effectuate, and because indigent parents in adoption and parental-rights termination proceedings are similarly situated, the Equal Protection Clause requires equal treatment and therefore the right to appointed counsel.

**Adoption.** In re Adoption of A.L.E., 2021-Ohio-972 | 2nd Appellate District | 3/26/21 In stepfather's petition for adoption of children, trial court did not err in finding that consent of biological father was not required where, although mother blocked father's telephone calls, father did not pursue avenues to secure visitation with children, evidence of tension between stepfather and father's parents was irrelevant, and father failed to have more than de minimis contact with children and did not show justifiable cause, R.C. 3107.07.

**Executor.** In re Estate of Wilson, 2021-Ohio-1056 | 9th Appellate District | 3/31/21 In appellant's application to be executor of father's estate

where his brother filed objections to application and initiated a separate action contesting the will, trial court did not err in finding that appellant was not suitable and in ordering appointment of disinterested third-party executor since the record shows that appellant limited brother's access to father at end of father's life, brother alleges that appellant exerted undue influence over father in changing the will and trust, and brothers are opposing parties in dispute over estate, R.C. 3113.05.

**Master commissioner.** In re Estate of Durkin, 2021-Ohio-1076 | 9th Appellate District | 3/31/21 In case in which the probate court had concerns about the actions of executor as the holder of power of attorney prior to decedent's death and the impact of his actions on assets of the estate, prompting the court to appoint attorney as a master commissioner, R.C. 2101.06, to investigate whether any additional assets should be included in the estate, executor's appeal is dismissed for lack of a final appealable order since the appointment did not affect a substantial right where, under the circumstances of this case, the appointment did not effectively revoke the executor's status as executor, R.C. 2505.02(A)(2).

**Claim.** Stafford Law Co., L.P.A. v. Estate of Coleman, 2021-Ohio-1097 | 8th Appellate District | 4/1/21 In law firm's action in general division of common pleas court against decedent's estate seeking payment for legal services pursuant to agreement, summary judgment for firm was error where the trial court improperly relied on probate court's statement that the claim was properly presented to the estate since the probate court lacked subject matter jurisdiction where the claim had been rejected by the estate, and a court without jurisdiction cannot decide any issues presented to it; the claim was incorrectly sent to attorney of executor rather than to the executor, as required by R.C. 2117.06.

**Constructive trust.** Figgie v. Figgie, 2021-Ohio-1195 | 8th Appellate District | 4/8/21 In action for fraud, constructive trust and related claims by beneficiaries of trust that held corporation stock, alleging that trust advisor executed redemption of the stock at a price well below market value to benefit shareholders, including trust advisor, as the value of the stock increased for shareholders, resulting in losses to trust beneficiaries, trial court did not

err in dismissing trust beneficiaries' constructive trust claim since it is not an independent cause of action and is not a basis for recovery without proof of wrongdoing or unjust enrichment, Civ.R. 12(B)(6).

**Adoption.** In re Adoption of B.L., 2021-Ohio-1221 | 6th Appellate District | 4/9/21 In stepmother's petition to adopt child, trial court did not err in finding that consent of mother was not required since mother's no-visitation order did not prevent her from communicating with child, she failed to show that events occurring during look-back period prevented her from contacting child, stepmother's address was available on the deed to her home and in her voting record, and mother failed to make required support and arrearage payments, although she had the ability to do so, R.C. 3107.07(A).

**Jurisdiction.** Ceculski v. Clatterbuck, 2021-Ohio-1311 | 5th Appellate District | 4/13/21 In heir's fraud action against brother-executor of mother's estate alleging that heir suffered harm when brother failed to provide information concerning mother's retirement fund, trial court did not err in granting brother's motion to dismiss for lack of personal jurisdiction since administration of estate was pending in another state, law of that state did not require decedent's personal representative to deliver copy of form to heir, and heir did not establish minimum contacts for exercise of personal jurisdiction, R.C. 2307.382(A).

**Appeal.** In re Estate of Abraitis, 2021-Ohio-1408 | 8th Appellate District | 4/22/21 Appeal of denial of former estate executor's exception to estate administrator's final account is dismissed for lack of a final appealable order since it was determined in former executor's previous appeal that she had no direct pecuniary interest and therefore lacked standing to file an appeal; also, an order denying exceptions to an account or inventory does not affect a substantial right and is therefore not a final appealable order.

**Attorney fees.** In re Guardianship of Montgomery, 2021-Ohio-1546 | 6th Appellate District | 4/30/21 In son's application to be appointed guardian of his father's person, trial court erred in denying attorney's motion for payment of fees for representation of son where motion for fees was denied without a hearing, Supp.R. 71, a prior judgment entry authorized son to hire and enter

into fee agreement with attorney, and because the guardianship was a complex proceeding it necessitated that the hearing not be waived.

**In terrorem clause.** In re Estate of Damschroder, 2021-Ohio-1558 | 3rd Appellate District | 5/3/21 In executor's action seeking declaratory judgment on issue of whether in terrorem/no-contest clause in will was triggered by decedent's step-daughter's involvement in will contest action filed by disinherited daughter, trial court did not err in finding that step-daughter did not trigger the no-contest provision since she merely answered disinherited daughter's complaint in which she was a named defendant and provided witness testimony in the will contest litigation; under the specific terms of the no-contest clause, step-daughter did not oppose the probate or "participate" in the action to contest or set aside the will.

## Family Law

**Child support.** Hall v. Zimmerman, 2021-Ohio-270 | 9th Appellate District | 2/1/21 In divorce action in which husband asserts that the parties reached an agreement regarding child support, the parties' agreement was not res judicata, barring later child support modifications, since finality is sacrificed in child support matters for the best interests of the children, the child support enforcement agency conducted a review when the wife informed the agency of her change in income, and in this case, the parties' settlement did not reflect that father's child support obligation was considered and resolved by the parties.

**Spousal support.** Rigby v. Rigby, 2021-Ohio-271 | 12th Appellate District | 2/1/21 In divorce action in which trial court ordered husband to pay spousal support for a five-year period, the court erred in declining to reserve continuing jurisdiction without providing a complete rationale for its decision that could be adequately reviewed where, inter alia, the court implicitly understood the instability of the parties' circumstances and recent societal events demonstrate the inability to predict future circumstances, R.C. 3105.18(E).

**Civil protection order.** Ferguson v. Ferguson, 2021-Ohio-297 | 5th Appellate District | 2/3/21 Issuance of civil protection order against petitioner's husband was not error since there

was sufficient evidence that husband attempted to cause physical harm to petitioner where, inter alia, there was testimony that husband aggressively attempted to grab the parties' minor child out of petitioner's arms, that he had thrown items at petitioner in the past, and that he had grabbed her from behind countless times to restrain her physically, and petitioner had a reasonable fear of future harm from her husband, R.C. 3113.31.

**Spousal support.** Miller v. Miller, 2021-Ohio-307 | 8th Appellate District | 2/4/21 In divorce action in which the parties executed a separation agreement that provided for securing spousal support payments to wife and where husband was ordered in separate litigation to transfer all of his shares of stock in family business to the parties' son, trial court did not err in ruling that wife holds a perfected lien on the family business shares transferred to son for certain quarterly support payments to wife and holds an equitable lien on those family business shares for monthly support payments and for a certain amount of legal fees, R.C. 3105.011(A).

**Civil protection order.** L.J. v. M.P., 2021-Ohio-312 | 8th Appellate District | 2/4/21 Issuance of a civil protection order against defendant-probationer under plaintiff's supervision was not error since defendant violated RC. 2903.211, menacing by stalking, where defendant threatened plaintiff on two separate days and twice on the second day, plaintiff believed defendant was attempting to intimidate her, and plaintiff was concerned for her safety and contacted protective services officers.

**Spousal support.** Stokes v. Stokes, 2021-Ohio-328 | 2nd Appellate District | 2/5/21 In divorce action, the trial court did not err in declining to award husband spousal support and to retain jurisdiction over the issue where husband was incarcerated for domestic violence and protection-order violations related to wife and he was involved in a tree cutting business that evidence showed was more profitable than the limited financial records reflected, so the support ruling was reasonable and appropriate, R.C. 3105.18(C).

**Child/Spousal support.** Gerdes v. Gerdes, 2021-Ohio-344 | 12th Appellate District | 2/8/21 Denial of husband's motion to reduce his spousal support obligation by wife's arrearage in her child support obligation was not error since

spousal support is for the sustenance and support of the former spouse and is independent of child support, and due to the entirely different purposes of child support and spousal support, there was no error.

**Property division.** Stierhoff-Palmison v. Palmison, 2021-Ohio-405 | 6th Appellate District | 2/12/21 In divorce action where wife claimed mutual mistake or excusable neglect when she failed in her obligation to pay first and second mortgages on marital home under parties' agreement, trial court did not err in denying wife's motion for relief from judgment since the agreement unambiguously specified division of property, wife attempted to shift obligation of second mortgage payment to husband by unilaterally amending the judgment entry, and she failed to present arguments for relief under Civ.R. 60(B).

**Civil protection order.** Spaulding v. Spaulding, 2021-Ohio-533 | 6th Appellate District | 2/26/21 In son's petition to extend domestic violence civil protection order against his father, alleging that father continued to engage in various acts of domestic violence, trial court did not err in extending the protection order since father had violated protective order resulting in conviction, son provided testimony concerning protection orders against father for other relatives, son's changed routine corroborated his mental distress, and domestic violence pursuant to R.C. 3113.31 does not require that the victim actually experience mental distress but only that the victim believes the stalker would cause mental distress or physical harm, R.C. 2903.211.

**Contempt.** Lelak v. Lelak, 2021-Ohio-519 | 2nd Appellate District | 2/26/21 In a divorce action where wife sought contempt orders against husband for failure to pay amounts owed under divorce decree, trial court erred in declining to adopt magistrate's decision finding husband in civil contempt since husband failed to provide notice to wife prior to making withdrawals from retirement account, husband's intent is not a defense to civil contempt, and husband failed to show impossibility in locating his wife; husband's conduct did not constitute criminal contempt where it was not a single act and it could be corrected.

**Custody.** Miller v. Dendinger, 2021-Ohio-546 | 3rd Appellate District | 3/1/21 In divorce action custody dispute, trial court did not err in awarding custody of two oldest children to husband where one child had significant unexcused absences from school, which resolved under husband's custody, while wife took children from marital home without notifying husband and was charged with altering the date on a drug prescription, R.C. 3109.04(B)(1); also, using third-party parenting coordinator for visitation exchanges reduced conflict, and trial court's judgment is reviewed for plain error since wife failed to object to magistrate's decision.

**Relief from judgment.** Blakeman v. Pelloski, 2021-Ohio-560 | 10th Appellate District | 3/2/21 In marriage dissolution action, denial of husband's Civ.R. 60(B)(5) motion for relief from judgment and to vacate the parties' dissolution documents was not error since husband failed to demonstrate timeliness of his motion filed years after dissolution and eight months after he completed counseling for mental health issues; although husband argued facts sufficient under local rule to schedule an oral hearing on his motion, he failed to assign as error the court's decision not to hold a hearing.

**Custody.** Shamblin v. Shamblin, 2021-Ohio-709 | 4th Appellate District | 3/4/21 In a divorce action in which wife sought change of parental rights and responsibilities, the trial court did not err in maintaining husband as residential parent and legal guardian of children since wife failed to show a change in circumstances regarding children's alleged illnesses, husband's alleged failure to provide treatments, allegation that fiancé was acting as children's primary caregiver or allegation that husband had a drinking problem, R.C. 3109.04(E).

**Civil protection order.** A.D. v. K.S.-S., 2021-Ohio-63 | 9th Appellate District | 3/8/21 In mother's action seeking a juvenile protection order on behalf of daughter, alleging that daughter feared for her safety following an altercation with respondent, trial court erred in issuing a protection order since daughter did not express any fear of future harm from respondent, and mother's nonspecific, unsubstantiated statement concerning threats against daughter on social media did not amount to competent, credible evidence of a present fear of harm, R.C. 2151.34(C).

**Child/Spousal support.** Tittel v. Tittel, 2021-Ohio-1571 | 4th Appellate District | 3/9/21 In divorce action in which husband disputed the spousal and child support obligations imposed by trial court, judgment is affirmed since husband failed to provide complete evidence of his income for one year, wife's testimony regarding her monthly expenses was credible, the court opined that the amount of spousal support was probably low, and in calculating child support, the court did not impute income to husband as if he were underemployed but found that he had done side jobs, as evidenced by various tax forms from previous years, R.C. 3105.18 and 3119.01.

**Civil protection order.** V.O. v. S.C.L., 2021-Ohio-683 | 9th Appellate District | 3/10/21 In wife's action resulting in domestic violence civil protection order against former husband, trial court did not err in denying husband's motion to set aside magistrate's order where Civ.R. 65.1 requires filing of objections as a prerequisite to consideration of merits on appeal, and husband failed to file any objections to the court's adoption of the magistrate's granting of a protection order.

**Contempt.** Norman v. Music, 2021-Ohio-824 | 4th Appellate District | 3/10/21 In father's action to establish father-child relationship and parenting time with child, trial court did not err in dismissing mother's contempt motions against father since father substantially complied with his obligation to pay child's medical expenses, and his failure to timely provide mother with attendance sheets and counseling information, which are qualifiers for him to be granted parenting time, did not constitute contempt under R.C. 2705.031.

**Civil protection order.** R.R. v. J.H., 2021-Ohio-706 | 8th Appellate District | 3/11/21 Granting a civil stalking and sexually-oriented offense protection order against respondent was not error where petitioner alleged repeated assault, petitioner's husband and sister observed her extensive injuries, and evidence clearly established that petitioner suffered mental distress, while respondent's testimony was not found to be credible, R.C. 2903.214 and 2903.211.

**Competency/Separation.** McMillan v. McMillan, 2021-Ohio-698 | 8th Appellate District | 3/11/21 In divorce action in which wife disputed husband's



competency to divorce after his biological daughter was appointed his guardian, divorce judgment is affirmed where daughter testified that her father filed for divorce on his own prior to being found incompetent, daughter's testimony that parties' separation was voluntary was credible, and although there was no evidence of incompatibility or gross neglect of duty as alleged in husband's complaint, the couple lived separate and apart for more than one year, which is grounds for divorce under R.C. 3105.01(J).

**Court orders.** FitzGerald v. FitzGerald, 2021-Ohio-751 | 6th Appellate District | 3/12/21 In divorce action where husband disputed fairness of court's findings, judgments are affirmed where, although wife's witness and exhibits lists were filed a day late, she attempted to comply with filing order in good faith and a problem with electronic filing caused the delay, the record shows that husband alienated children from wife and failed to follow court orders regarding children, and he was found to be voluntarily underemployed because his loss of employment was a result of his own unprofessional conduct leading to finding of contempt, R.C. 3109.04.

**Civil protection order.** Harnar v. Becker, 2021-Ohio-784 | 12th Appellate District | 3/15/21 In action where former neighbors both filed complaints for a civil stalking protection order against the other, it was not error to grant protection orders to both parties where appellant continued to drive past appellee's house multiple times a day, sometimes pulling to the curb and waiting for no apparent reason, there were other ways to enter and leave neighborhood without driving past appellee's house, the magistrate did not attribute any significance to past filings between the parties, and appellee sought medical attention for increased anxiety, R.C. 2903.214.

**Civil protection order.** E.B. v. J.B., 2021-Ohio-776 | 9th Appellate District | 3/15/21 In petitioner's action seeking domestic violence civil protection order against her husband during pendency of divorce, trial court did not err in issuing order where, although husband did not make direct threats of physical harm to wife, his pattern of driving by wife's residence-marital home or parking his car and taking photographs to monitor her activity, caused wife mental distress that significantly impacted her daily life, as evidenced by her altered routines and her testimony that she felt physically ill

and purchased a handgun to carry, R.C. 2903.211.

**Child support.** Delaware Cty. Child Support Enforcement Agency v. Kise, 2021-Ohio-915 | 9th Appellate District | 3/22/21 In divorce action where husband was ordered to pay spousal support and arrearage liquidation payments through county child support enforcement agency, trial court erred in waiving agency's administrative processing fee arrearage and denying agency's motion for relief from judgment since the processing fee is mandated under R.C. 3119.27, that statute along with R.C. 3119.28(B) and 3121.58 limits the court's ability to reduce the fee arrearage to zero balance, and agency was not provided notice or opportunity to be heard on the issue because it was not party to the litigation, Civ.R. 60(B)(5).

**Contempt.** Babcock v. Babcock, 2021-Ohio-914 | 5th Appellate District | 3/22/21 In mother's motion to show cause for contempt alleging father's violation of parenting time orders, trial court did not err in its nunc pro tunc judgment entry finding father in contempt where father had responsibility to transport child to and from visits with mother, and although father argued impossibility defense because his vehicle broke down, his prior contempt order suspended sanctions upon his strict compliance with purge conditions, but his efforts to comply were found insufficient, R.C. 2705.02(A).

**Civil protection order.** J.J. v. Kilgore, 2021-Ohio-928 | 10th Appellate District | 3/23/21 Issuance of a civil protection order against respondent is affirmed since, inter alia, the parties consented to the order and by agreeing to the consent order, respondent forfeited any claim that the order was somehow invalid or improper for failing to comply with an earlier filed order, and also any alleged error in earlier ex parte order was superseded by the final consent order.

**Custody.** Echols v. Echols, 2021-Ohio-969 | 2nd Appellate District | 3/26/21 In divorce action where wife sought change of custody and finding of contempt against husband, alleging interference with visitation and access to daycare, trial court did not err in denying wife's motion for contempt where provisions of divorce decree regarding holiday visitation were open to dual interpretations, daycare had policy prohibiting unfettered access to children while in attendance, and differences

in parenting styles or older child's expressed desire to live with mother did not establish a change of circumstances sufficient for custody change, R.C. 3109.04.

**Civil protection order.** P.N. v. A.M., 2021-Ohio-1163 | 7th Appellate District | 3/26/21 In petitioner's action seeking civil stalking protection order against respondent-backyard neighbor for making comments and gestures at her grandchildren who were in a treehouse on petitioner's property near fence, trial court did not err in granting protection order where respondent knowingly engaged in a pattern of conduct on multiple occasions, R.C. 2903.211, and petitioner's reduced use of backyard due to respondent's outbursts constituted substantial incapacity, demonstrating mental distress.

**Clerical mistake.** In re Schenker, 2021-Ohio-1018 | 11th Appellate District | 3/29/21 In dissolution of marriage where husband sought termination of spousal support because of contradictory clauses in parties' separation agreement, trial court did not err in correcting the agreement in a nunc pro tunc entry and in denying husband's motion where Civ.R. 60(A) permits correction of clerical mistakes, removal of the incorrect clause was not a substantive change because the court originally intended the agreement to provide for the specified spousal support, and the court had jurisdiction to correct the clerical error even though it did not retain jurisdiction to modify spousal support.

**Jurisdiction.** Kubasco v. Kubasco, 2021-Ohio-1031 | 5th Appellate District | 3/29/21 In divorce action in which husband sought modification of spousal support, it was error to deny husband's motion on reasoning that the court lacked jurisdiction where the court should first issue a final decree based on magistrate's decision that specifically detailed the content of divorce decree and then the court should proceed to rule on husband's motion to modify spousal support.

**Custody.** Michael v. Michael, 2021-Ohio-992 | 9th Appellate District | 3/29/21 In divorce action, trial court did not err in naming mother residential parent and legal custodian and ordering father to pay child support since shared parenting would not be in children's best interest where, inter alia, children were living with mother and were well-

adjusted to their current environment and community, physical distance between the parties would make equal parenting time difficult and would result in significant travel and changes for children of tender years, and parties' communication issues would also make shared parenting difficult, R.C. 3109.04(F)(1).

**Contempt.** Vinson v. Vinson, 2021-Ohio-1055 | 9th Appellate District | 3/31/21 In divorce action, trial court's ruling that husband was in contempt for failure to pay child support is affirmed since husband admitted to a finding of contempt by agreeing with child support enforcement agency on the amount of child support that he owed and acknowledged on the record that agency's description of his payment history was accurate; husband's disagreement with the process itself and his belief that his failure to comply with the support order was justified were meritless arguments.

**Contempt.** Schneider v. Schneider, 2021-Ohio-1058 | 11th Appellate District | 3/31/21 In divorce action in which both parties filed motions to show cause for failing to abide by terms of final decree, trial court did not err in finding husband in contempt and in denying his motion against wife since husband failed to effectuate transfer of funds pursuant to divorce decree and subsequent qualified domestic relations order, he failed to pay mortgages on residential property as required, he failed to transfer wife's agreed-upon personal property or pay its assigned value, and he failed to submit evidence that wife interfered with parenting schedule.

**Custody.** Huston v. Huston, 2021-Ohio-1077 | 9th Appellate District | 3/31/21 In divorce action, denial of husband's motion to reallocate parental rights is affirmed where husband first argues assignments of error related to earlier rulings that were not appealed and then argues that the trial court violated various professional standards and the Code of Judicial Conduct or Rules for the Government of the Judiciary, but allegations of judicial misconduct are not within the instant court's jurisdiction.

**Civil protection order.** Wedlake v. Elswick, 2021-Ohio-1119 | 2nd Appellate District | 4/2/21 In wife's petition for domestic violence civil protection order against husband, it was not error

to deny petition and vacate prior ex parte CPO since there was insufficient evidence that husband placed wife in fear of imminent serious physical harm by force or threat where the parties did argue in bathroom of residence, but husband credibly testified that only after wife left did he punch wall with fist and screwdriver, husband's cellphone contact with wife in violation of ex parte CPO was to make sure children were safe, and husband was not served with amended petition alleging menacing by stalking as an alternate basis for protection order, R.C. 3113.31.

**Relief from judgment.** Sullivan v. Sullivan, 2021-Ohio-1117 | 2nd Appellate District | 4/2/21 In a divorce action in which husband was found in contempt of court for failure to pay wife's portion of his retirement benefit, denial of husband's motion for relief from judgment without a hearing is affirmed where husband asserted only trial court error rather than Civ.R. 60(B) grounds for relief, alleging that the court permitted extrinsic fraud by not conducting a hearing during which he would have presented evidence that contradicted the facts of the case, and therefore issues raised in the motion were barred by the doctrine of collateral estoppel.

**Property division.** Himes v. Himes, 2021-Ohio-1111 | 2nd Appellate District | 4/2/21 In a divorce action where husband was found in contempt for failure to refinance or sell marital residence within an allotted time, trial court erred in requiring husband to purge contempt by making payment to wife equal to her share of estimated potential equity in home where the home sold for much less than the court's estimated amount prior to hearing on motion to show cause, and the court's order operated to modify division of property in the final divorce decree in violation of R.C. 3105.171(I); the court's award of attorney fees and court costs is affirmed.

**Procedendo.** Calhoun v. Miller, 2021-Ohio-1475 | 7th Appellate District | 4/7/21 In relator's action seeking to compel respondent-judge to rule on objections to magistrate's decision modifying her parental rights, writ of procedendo is granted since respondent's decision did not constitute a final appealable order, and respondent was afforded 30 days to issue a final order but did not do so, leaving relator without an adequate remedy at law, Sup.R. 40(A)(3).

**Contempt/Attorney fees.** Weinsziehr v. Weinsziehr, 2021-Ohio-1568 | 4th Appellate District | 4/7/21 In divorce action in which wife filed contempt motion asserting that husband failed to abide by parenting schedule, trial court did not err in finding husband in contempt and in awarding wife attorney fees where husband admitted to disobeying agreed divorce decree, he did not file any document disputing wife's attorney's billing statement, and wife's alleged past violent tendencies did not justify husband's behavior of denying wife parenting time and disobeying court orders, R.C. 3109.051(K) and 3105.73.

**Custody.** Kurzen v. Kurzen, 2021-Ohio-1222 | 6th Appellate District | 4/9/21 In divorce action in which husband and wife both sought termination of joint shared parenting plan, trial court did not err in designating wife as residential parent with husband having parenting time in accordance with standard policy where wife's diagnosed medical issues do not impact her ability to work or care for child, husband's allegation that wife instilled fear in child and lied to child was not established by credible evidence, and child has strained relationship with husband/father, R.C. 3109.04.

**Child support.** Williams v. Williams, 2021-Ohio-1339 | 2nd Appellate District | 4/16/21 In divorce action where husband sought modification of child support obligation, trial court did not err in its calculation where magistrate relied on husband's tax documents and profit/loss statement but added expenses back to husband's gross income since husband is sole employee of his business and is in control of accounting, documents he submitted were not reliable evidence of income, and his business paid an income to his mother even though she did not work there.

**Interlocutory orders.** Jones v. Jones, 2021-Ohio-1498 | 4th Appellate District | 4/19/21 In divorce action, trial court did not err in changing spousal support order from allowing husband to make payments directly to wife by deducting amount from checking or other account to requiring husband to make spousal support payments through child support enforcement agency since all prior orders are interlocutory once a trial court enters a final divorce decree, and the court retains inherent authority to reconsider its interlocutory orders any time before it enters final judgment.

**Spousal support.** Simon v. Simon, 2021-Ohio-1387 | 9th Appellate District | 4/21/21 In divorce action in which husband sought change in spousal support obligation, trial court did not err in terminating his support obligation to wife and in also giving husband purge conditions related to his contempt finding for failure to pay support since there was a significant change of circumstances where husband's income was less than previously found, wife was cohabiting with and receiving financial support from a third party, and wife was not prejudiced by purge conditions afforded husband in judgment, R.C. 3105.18.

**Custody/Jurisdiction.** Polanco v. Polanco, 2021-Ohio-1450 | 12th Appellate District | 4/26/21 In custody action in which father filed motion to register child support order from another state in Ohio court and to terminate child support because children were emancipated, trial court erred in adopting magistrate's decision to dismiss motion for lack of jurisdiction where father met requirements of R.C. 3115.611(A)(1) because mother and children reside in Ohio and father no longer lived in issuing state, and although support was a non-modifiable term of order, there is no reason under the law of the issuing state that support cannot be terminated upon emancipation.

**Civil protection order.** M.O. v. T.M., 2021-Ohio-1471 | 5th Appellate District | 4/27/21 In petitioner's action in which the trial court issued a civil stalking protection order against respondent-former partner, protection order was justified since petitioner's life was disrupted and she was frightened for her safety and that of her daughter, R.C. 2903.211; however, the court erred in imposing a maximum five-year term where respondent was not physically violent and he intended to move to another state and not return to Ohio.

**Child support.** V.C. v. O.C., 2021-Ohio-1491 | 8th Appellate District | 4/29/21 In divorce action, trial court applied the incorrect legal standard in calculating husband's child support obligation since parents' combined income was greater than the maximum income listed on basic child support schedule, so R.C. 3119.04 applied, but the court made no mention of R.C. 3119.04 and there is nothing to otherwise suggest that the court considered the needs and standard of living of the children and the parents, as required by the statute.

**Child support.** Bursiel v. Bursiel, 2021-Ohio-1548 | 6th Appellate District | 4/30/21 In divorce action in which wife sought extension of child support for child still in high school, trial court's judgment terminating child support and granting credit to husband for overpaid child support is affirmed since child was 19 years-old, wife failed to object to administrative decision pursuant to R.C. 3119.91 and 3119.92, the court's nunc pro tunc judgment was properly used to correct a clerical discrepancy, and wife did not show that attorney's failure to submit required transcripts was excusable neglect.

**Custody/Prohibition.** Kallet v. Wilgus, 2021-Ohio-1637 | 5th Appellate District | 5/11/21 In parents' petition for writ of prohibition to ask court to vacate all orders and immediately return the minor child to them, in the state in which they lived, after intervenor-grandmother was granted temporary custody in Ohio, writ is granted since child's home state has jurisdiction under R.C. 3127.15, child was in Ohio for only six days before intervenor filed for temporary custody, child does not demand immediate protection on theory of abandonment under R.C. 3127.18, and appeal would not be an adequate remedy because it would further delay reunification.

#### Government/Administrative

**Appropriation.** Cuyahoga Hts. v. Ram Supply Chain, L.L.C., 2021-Ohio-315 | 8th Appellate District | 2/4/21 In village's appropriation action, resulting in ruling that the appropriation of property was necessary and served a legitimate public purpose, trial court complied with the requirement that only a judge may determine appropriation necessity under R.C. 163.09(B)(2) when it decided to have a magistrate conduct an appropriations hearing since the court made the final determination on necessity where the court afforded parties time to file objections and made a separate finding regarding necessity at a later date; also, property owner's motion for extension of time to file objections was filed the day after final judgment and the court did not have jurisdiction to grant extension.

**Zoning.** State ex rel. R.L. Hawk, L.L.C. v. Troy Planning Comm., 2021-Ohio-327 | 2nd Appellate District | 2/5/21 In applicant's action for writ of mandamus and for declaratory judgment to obtain approval of application for a plat plan, trial court's ruling that the planning

commission violated R.C. 711.09(C) is affirmed since the action is not moot where the commission did not either endorse approval of the plat or refuse to do so within 30 days after applicant submitted the plat, and the fact that the commission approved the plat plan later is irrelevant because the commission did not just approve the plan, it added conditions.

**Health order.** S.W. Ohio Basketball, Inc. v. Himes, 2021-Ohio-415 | 12th Appellate District | 2/16/21 In sports organizations' challenge to state health department director's order that imposed restrictions on participation in sports, trial court's judgment granting organizations' request for a preliminary injunction, on reasoning in part that the order's distinction between contact and non-contact sports violated constitutional equal protection, was error since the distinction between the groups was rationally related to a legitimate government interest where enjoining the director's order would harm the public's interest in preventing the spread of a highly contagious and dangerous disease.

**Immunity.** Eikenberry v. Municipality of New Lebanon, 2021-Ohio-453 | 2nd Appellate District | 2/19/21 In plaintiff's action against city, alleging negligence in its failure to reinstate service for sewer line connecting his apartment building to main sewer pipe, causing sewage to backup into his basement, trial court did not err in granting summary judgment to city since city's work on sewer pipes was reconstruction rather than routine maintenance, as evidenced by funding and specialized equipment required, and therefore city's work on sewer was a governmental function which entitled city to political subdivision immunity pursuant to R.C. 2744.02(B)(2).

**Zoning.** Brendamour v. Indian Hill City Council, 2021-Ohio-568 | 1st Appellate District | 3/3/21 In plaintiffs-neighboring property owners' action disputing city's decision to approve intervenors' residential zoning application, trial court did not err in upholding the city's decision since, although the lot line at back of property is not directly opposite the front lot line, it is generally opposite the front line in satisfaction of zoning code, and although under first frontage calculation method, the length of front lot line is smaller than required by code, second frontage calculation method shows that the lot satisfies zoning code's requirement for frontage.

**Employment.** State ex rel. Tarrier v. Pub. Emps. Retirement Bd., 2021-Ohio-649 | Supreme Court of Ohio | 3/10/21 Denial of relator-public defender's petition for writ of mandamus to order respondent-retirement board to retroactively modify her retirement plan is affirmed since there is no statutory authority permitting respondent to change relator's election from traditional pension plan to combined plan, R.C. 145.11(A); statutes delineating into which board-managed funds delinquent contributions (arising from change in public defenders' employment status) are to be credited impose no duty on the board to allow a participant to switch retirement plans, R.C. 145.483 and 145.23.

**Immunity.** Holmes v. Cuyahoga Community College, 2021-Ohio-687 | 8th Appellate District | 3/11/21 In plaintiff's former state college police officer's claim of reverse race discrimination by defendant-head of college's police department, trial court's denial of defendant's motion for judgment on the pleadings asserting governmental immunity was not error since, although plaintiff would ultimately have to meet the high threshold regarding malice, bad faith, wanton and recklessness to overcome defendant's immunity, plaintiff's allegations are sufficient to survive a motion for judgment on the pleadings, Civ.R. 12(C) and R.C. Ch. 2744.

**Immunity.** Silverman v. Cleveland, 2021-Ohio-688 | 8th Appellate District | 3/11/21 In plaintiff's negligence action against city after he fell into a pothole and suffered injuries, trial court did not err in granting summary judgment to the city on reasoning that the claim was barred by governmental immunity since the city demonstrated that it lacked actual or constructive notice of the pothole, and plaintiff's claim that the city negligently breached its duty under R.C. 2744.02(B)(3) to keep the public roadway free of obstructions and in good repair is meritless.

**Public Meetings Act.** State ex rel. Massie v. Lake Cty. Bd. of Comms., 2021-Ohio-786 | 11th Appellate District | 3/15/21 In relator's-citizen's declaratory and related claims action asserting violation of the Open Meetings Act (OMA) after he was excluded from a meeting at which county administrator and visitors bureau entered into a

memorandum of understanding to release excise tax funds to specific uses, summary judgment for respondent-county board was not error since administrator had power to enter into understanding on behalf of board pursuant to R.C. 305.30(A), the purpose of the meeting was informational and therefore not subject to the OMA, and visitors bureau is not a public body under R.C. 121.22(B).

**Immunity.** Tomlin v. Akron, 2021-Ohio-819 | 9th Appellate District | 3/17/21 In plaintiffs' personal injury action against city for injuries sustained in a vehicle accident in an intersection with no stop sign, summary judgment in favor of city on reasoning that city was entitled to political subdivision immunity was error since the court applied an outdated version of the manual of uniform traffic control devices, and the revised manual indicates a stop sign is mandated under certain circumstances, R.C. 2744.01.

**Zoning.** 8491 Mayfield Acquisitions, L.L.C. v. Chester Bd. of Zoning, 2021-Ohio-898 | 11th Appellate District | 3/22/21 Reversal of zoning board's denial of property owner's application seeking area variances in order to construct auto parts store was not error where, although the board discussed the practical difficulties test set forth in Duncan, its finding did not contain a thorough analysis with consensus as to each factor, the proposed site plan would not substantially alter the neighborhood, strict application of zoning requirements would render beneficial use unlikely, and property owner's plan could assist in traffic safety, R.C. 2506.04.

**Nuisance.** Columbus v. ACM Vision, V. L.L.C., 2021-Ohio-925 | 10th Appellate District | 3/23/21 In defendant's-property owner's appeal of contempt order issued for his failure to comply with order to abate a nuisance maintained at his property, judgment is affirmed where defendant's sovereign-citizen argument against jurisdiction is frivolous, R.C. 1901.181 provides that court's environmental division has jurisdiction over defendant's violations, city's motion for civil contempt was filed pursuant to R.C. 2705.02 and 2727.11 to coerce compliance with underlying order, and the fine imposed for each day property remained in noncompliance is coercive, rather than punitive, in nature.

**Nuisance abatement.** Cleveland v. Tuzzan Ltd., 2021-Ohio-1528 | Ohio Court of Claims | 3/24/21 In city's action to recover damages for nuisance abatement against former owner of property which had been appropriated by department of transportation, summary judgment in favor of city is granted since structure on property constituted an emergent public nuisance, city ordinance provides that record owner at time of demolition is responsible for costs relating to demolition, and owner's wrongful demolition counterclaim is barred by political subdivision immunity pursuant to R.C. 2744.02.

**Immunity.** Johnson v. Greater Cleveland Regional Transit Auth., 2021-Ohio-938 | 8th Appellate District | 3/25/21 In plaintiff's wrongful death action against defendants-public transit authority and bus driver after her son suffered fatal injuries in an accident when he accelerated and swerved his motorcycle to avoid collision with bus, trial court erred in denying driver's motion for summary judgment claiming statutory immunity where driver's conduct was not reckless or wanton as evidenced by beginning his left turn only after opposing vehicle signaled him to do so and proceeding slowly and cautiously and stopping before colliding with motorcycle, R.C. 2744.03(A)(6).

**Home rule.** Dayton v. State, 2021-Ohio-967 | 2nd Appellate District | 3/26/21 In city's challenge to provisions of R.C. 5747.502 requiring the collection and reporting of civil fines and penalizing city for operating a photo monitoring program, trial court did not err in granting summary judgment to city on reasoning that the challenged provisions of the statute violated the Home Rule Amendment because they unconstitutionally limit the city's legislative authority regarding its traffic camera photo enforcement program, they did not serve an overriding statewide interest and they failed to prescribe rules of conduct upon citizens in general, Canton.

**Immunity.** Johnston v. N. Kingsville, 2021-Ohio-1012 | 11th Appellate District | 3/29/21 In plaintiff-mother's negligence action against defendants-city and golf instructor for injuries sustained by her son when he was hit by a ball hit by instructor at a golf clinic, it was error to deny defendants' motion for summary judgment claiming governmental immunity where trial court correctly

determined that city's operation of golf course was a governmental function, R.C. 2744.01(C), but court erred in making R.C. 2744.03 analysis of defenses to exceptions to immunity since plaintiff failed to establish an exception under R.C. 2744.02(B)(2), the only exception argued in the trial court, and no other statutory exception applied.

**Open Meetings Act.** State ex rel. Hicks v. Clermont Cty Bd. of Com-mrs., 2021-Ohio-998 | 12th Appellate District | 3/29/21 In plaintiff-resident's action asserting that board of county commissioners violated Open Meetings Act (OMA), trial court did not err in granting summary judgment to plaintiff regarding nine executive sessions since the board's inability to produce evidence of what was considered during the sessions, whether because of lack of memory or lack of adequate recordkeeping, does not satisfy the board's burden to show that the sessions fell under one of the exceptions of R.C. 121.22(G); also, award of attorney fees is affirmed since the hourly rates and time expended were reasonable, and items that were blocked billed related to the successful OMA claim and were not so extensive as to concern the court.

**Immunity.** Parra v. Jackson, 2021-Ohio-1188 | 8th Appellate District | 4/8/21 In plaintiff-mother's action against defendant-police chief, alleging that gang members affiliated with mayor's grandsons killed her son and that defendant was involved in obstructing the investigation, trial court did not err in denying chief's governmental immunity-based motion to dismiss claims against him in his personal capacity since plaintiff had no obligation to disprove affirmative defense of immunity in her complaint, and plaintiff's allegations that chief acted with malicious purpose, in bad faith, or in reckless manner, which are exceptions to governmental immunity, R.C. 2744.03(A)(6), survive chief's Civ.R. 12(B)(6) motion.

**Zoning.** Banker's Choice, L.L.C. v. Cincinnati Zoning Bd. of Appeals, 2021-Ohio-1206 | 1st Appellate District | 4/9/21 In developer's action seeking certificate of appropriateness for demolition of historic property, the trial court did not err in adopting magistrate's decision ordering issuance of certificate since evidence showed that property would be deprived of all economically viable use without approval of certificate, developer's reasonable

investment-backed expectations would not be maintained without approval of certificate, and developer neither created nor exacerbated economic hardship it would suffer if certificate was not approved.

**Immunity.** Angelo v. Warren, 2021-Ohio-1260 | 11th Appellate District | 4/12/21 In plaintiff's action against city alleging that water department terminated his water service without cause, which led to damage to his home, trial court did not err in denying city's motion for summary judgment that asserted qualified immunity since, in response to a doorknob tag, plaintiff communicated to water company that he was not immediately available to grant access to check meter, damage to boiler from lack of water was arguably foreseeable, and city's action in turning off water created an exception to immunity, for which defenses in R.C. 2744.03 do not apply.

**Immunity.** Gordon v. Mt. Carmel Farms, L.L.C., 2021-Ohio-1233 | 12th Appellate District | 4/12/21 In plaintiffs-property owners' action seeking declaratory and injunctive relief and damages against defendants-neighboring farm and township, alleging zoning violations, nuisance activities and unlawful expansion of easement, trial court erred in denying defendants' motion to dismiss since director of zoning is entitled to qualified immunity because plaintiffs have no constitutionally protected property interest in enforcement of zoning resolution against farm, and township did not cause alleged constitutional violation at issue and is not liable under 42 U.S.C. Sec. 1983.

**Open Meetings Act.** Ames v. Root-stown Twp. Bd. of Trustees, 2021-Ohio-1369 | 11th Appellate District | 4/19/21 In plaintiff's action against township board of trustees alleging violations of Open Meetings Act on dates in 2015 and 2016, trial court erred on remand in issuing an injunction against the board when it failed to include violations for meetings held in 2015, and the injunction was insufficient because it enjoined the board from conducting business in violation of R.C. 121.22(G)(8)(a), but did not prohibit the type of violation that occurred in 2015 under R.C. 121.22(G)(8)(b).

**Firearms legislation.** Kellard v. Cincinnati, 2021-Ohio-1420 | 1st Appellate District | 4/23/21 In city employee's action against city seeking injunctive

relief for city's failure to implement revisions to state gun legislation that would allow him to store a gun in his vehicle on city property, trial court erred in granting permanent injunction against the city since it had already complied with the revisions by the time of the hearing, R.C. 2923.1210, so the injunction was for hypothetical future transgressions rather than for a concrete controversy; since the city changed its policies in response to employee's complaint, he is the prevailing party and is entitled to attorney fees up to the time of city's compliance, former R.C. 9.68(B).

**Immunity.** Granite City Ctr. v. Champion Twp. Bd. of Trustees, 2021-Ohio-1458 | 11th Appellate District | 4/26/21 In action by business against township for breach of oral agreement for the parties to obtain bids for demolition of building on property of business and for the business to be responsible for the demolition at a price it selected, trial court did not err in denying township's motion to dismiss, arguing that claims were barred by political subdivision immunity, since R.C. 2744.09(A) provides that there is no statutory immunity for contract claims brought against political subdivisions, and business was not required to affirmatively demonstrate an exception to immunity, R.C. 2744.02.

**Immunity.** Martin v. Payne, 2021-Ohio-1557 | 3rd Appellate District | 5/3/21 In action by homeowners against village for water damage to their property, alleging that village negligently maintained its sewer system, trial court did not err in granting village's motion for summary judgment since the village is entitled to immunity under R.C. 2744.02(A)(1), and homeowners did not establish negligent maintenance, operation or upkeep of sewer system to qualify for the immunity exception under R.C. 2744.01(G)(2)(d) since not one professional would say that the homeowners' basement issue was caused by the negligent maintenance of the sewer system by the village.

## Insurance

**Exclusion.** Gahanna v. Ohio Mun. Joint Self-Ins. Pool, 2021-Ohio-445 | 10th Appellate District | 2/18/21 In city's action against insurer seeking coverage for damages assessed against city for overtaxing its residents, trial court did not err in granting summary judgment to insurer where insurance policy

## Insurance (continued)

excluded coverage for any claim for refund of taxes, the language of the policy made the parties' intent clear and unambiguous, and the reason for overtaxing residents did not change the fact that the money the city was ordered to pay its residents was a refund.

**Improper cancellation.** McCruter v. Travelers Home & Marine Ins. Co., 2021-Ohio-472 | 11th Appellate District | 2/22/21 In supplemental complaint by dog bite victim's mother against dog owner's insurer to collect insurance after obtaining underlying judgment against dog owner, summary judgment for insurer was error where insured apparently did not want to involve insurer, did not timely notify insurer, and entered into an agreement in which insurer directed insured not to perform her duties under the policy, creating the inference of improper cancellation of the policy under R.C. 3929.05 and having the potential effect of prejudicing mother's derivative rights as a judgment creditor operating under R.C. 3929.06.

**Policy limits.** Kean v. Cincinnati Ins. Co., 2021-Ohio-490 | 10th Appellate District | 2/23/21 In insured homeowner's breach of contract action against insurer disputing policy's limitation on coverage for wet-rot damage to home, summary judgment in favor of insurer was not error since the policy language clearly and unambiguously established the maximum obligation for damage caused by fungi or wet rot, insurer did pay insured the policy limit, and insured's self-serving affidavit was not sufficient to avoid summary judgment without corroborating materials, Civ.R. 56(C).

**Uninsured motorist.** Washington v. Evans, 2021-Ohio-587 | 10th Appellate District | 3/4/21 In plaintiff's action to recover damages from insurer for injuries sustained when she was struck by uninsured vehicle as she was entering her vehicle, summary judgment in favor of insurer was not error where, although plaintiff resided with grandmother at time of accident, the vehicle in question was not covered under grandmother's policy, and under medical expenses for bodily injury provision of policy, because plaintiff was in the process of entering her vehicle at the time of the accident, she was occupying the vehicle and therefore excluded from uninsured motorist coverage under terms of the policy.

**Damages.** State Auto Property & Cas. Ins. Co. v. Abco Fire Protection, Inc., 2021-Ohio-1189 | 8th Appellate District | 4/8/21 In fire insurer's subrogation claim against fire protection company hired to clean chimney by insured-restaurant in which fire occurred, trial court did not err in denying insurer's motion for new trial, arguing inadequate damages where jury apportioned most liability to insured rather than to protection company, there was no information for jury to consider replacement cost of damaged property, and insurer failed to show that jury lost its way in assessing damages, Civ.R. 59(A) and R.C. 2307.22(A)(2); also, court noted issues related to Civ.R. 59 passion or prejudice and weight-of-the-evidence tests for determining excessive or inadequate damages.

**Building/Personal property.** E. Liverpool v. Owners Ins. Co., 2021-Ohio-1474 | 7th Appellate District | 4/21/21 In city's breach of contract action against insurers for denial of claim for damages resulting from water vessel's collision with intake structure on river, summary judgment in favor of defendants was not error where, although the policy did not list intake structure and well house as separate structures, the address listed for the well house in policy declarations and parol evidence unambiguously show that coverage was only for well house where intake connects and not the separate intake structure.

**Attorney fees.** NL Corp., Inc. v. Seneca Specialty Ins. Co., 2021-Ohio-1610 | 2nd Appellate District | 5/7/21 In insured-nightclub's breach of contract action against insurer seeking reimbursement for attorney fees accrued in insurer's settlement of claim brought by family of man who fell in insured's parking lot and later died, summary judgment for insurer was not error since insurer's obligation to pay insured's attorney fees was not triggered where no legal action was filed against insured, so insurer was not required to pay fees and costs of attorney who insured voluntarily retained; also, insurer did not act in bad faith in its handling of the matter.

## Juvenile Law

**Dependent child.** In re A.C., 2021-Ohio-288 | 5th Appellate District | 2/1/21 Adjudication of child as dependent was supported by clear and convincing evidence, even though mother's drug use did not apparently impact child where, inter alia, mother actively used heroin and cocaine during her

pregnancy, she failed to maintain stable housing and employment for the last six years, she planned to move in with father, who also had a history of substance abuse, and she sought and obtained minimal prenatal care during the first 20 weeks of her pregnancy and failed to disclose her drug use to the obstetrician, R.C. 2151.04(D).

**Delinquency.** In re D.J., 2021-Ohio-278 | 12th Appellate District | 2/1/21 Following delinquency adjudication by admission of delinquency for adult gross sexual imposition, denial of juvenile's petition to terminate juvenile offender registrant designation and classification as a Tier I sex offender was not error since the juvenile court considered the statutory factors and weighed the evidence presented by appellant, and the juvenile court could consider the specific facts of the offense underlying juvenile's adjudication and his lack of remorse.

**Magistrate's decision.** In re C.M.C., 2021-Ohio-314 | 8th Appellate District | 2/4/21 In award of legal custody of children to second maternal aunt, mother's and first maternal aunt's claim that they were not adequately served and unconstitutionally deprived of the opportunity to file objections to magistrate's decision is without merit since magistrate's decision was timely served on counsel for each party via electronic mail, email addresses used by clerk of courts were consistent with those provided by counsel, and there is no evidence that counsel for mother or first maternal aunt notified the serving party that the magistrate's decision was not timely received, Juv.R. 40(D)(3)(a)(iii), 20(B), and Civ.R. 5(B)(2)(f).

**Magistrate's decision.** Slosser v. Sulpance, 2021-Ohio-319 | 10th Appellate District | 2/4/21 In shared parenting plan dispute, it was error to grant mother's motion to dismiss father's objections to magistrate's decisions for untimeliness since the time for filing objections was tolled by father's request for findings of fact and conclusions of law that were rejected by the clerk of courts on the erroneous reasoning that the father's motions required that a request for hearing or a proposed entry be filed with the motion; a timely request for findings of fact and conclusions of law tolls the time for filing objections to the magistrate's decision under Civ.R. 53(D)(3)(b)(i).

**Custody.** In re C.P., 2021-Ohio-323 | 2nd Appellate District | 2/5/21 Award of permanent custody of children to agency was in children's best interest where, inter alia, children had been locked overnight in their rooms with no furnishings, 7 year-old child had scabbing on his face and was not in school, and father was charged with a drug offense, while children's behavior improved in foster care but regressed after visitation with parents, and children all had negative feelings towards father, R.C. 2151.414(D).

**Standing.** In re R.M., 2021-Ohio-324 | 2nd Appellate District | 2/5/21 Award of permanent custody of child to agency is affirmed where the agency had standing to move for permanent custody prior to a finding by the trial court that the agency did not need to make reasonable efforts to return the child to father since R.C. 2151.415(A)(4) authorizes a children services agency to move for permanent custody prior to expiration of a temporary custody order without regard to whether the trial court has made a reasonable-efforts bypass determination.

**Guardian ad litem.** In re F.S., 2021-Ohio-345 | 12th Appellate District | 2/8/21 Award of permanent custody of dependent children to agency is affirmed where the trial court did not err in declining to appoint a guardian ad litem for parents since they did not appear to be incompetent, R.C. 2151.281(C), and parents did not suffer prejudice since they were represented by counsel who safeguarded their rights and advocated for reunification in accordance with their wishes.

**Custody.** In re A.B., 2021-Ohio-357 | 5th Appellate District | 2/8/21 Award of legal custody of child to child's step-grandparents was not error since father was found unsuitable where, inter alia, he was charged with two criminal offenses, he had a mental health condition for which he did not take medication, and he never had unsupervised visitation with his child, while the child was fully adjusted to her home and community, R. C. 2151.23(A) (2).

**Delinquency.** In re D. M., 2021-Ohio-354 | 5th Appellate District | 2/8/21 Although adjudication of juvenile as delinquent of adult sexual imposition, R.C. 2907.06(A)(1), was not supported by sufficient evidence for a first-degree misdemeanor conviction where the

state failed to show that appellant had a prior delinquency adjudication for violating R.C. 2907.02 through 2907.06 and former R.C. 2907.12, but testimony of victim and other students-witnesses of sexual contact of victim by juvenile supported a third-degree misdemeanor conviction.

**Custody.** In re R.A.D., 2021-Ohio-372 | 5th Appellate District | 2/10/21 Award of permanent custody of five dependent and neglected children to agency was in children's best interest where, inter alia, there was an ongoing pattern of domestic violence between the mother and one of the fathers which had occurred in the presence of the children, one of the children ingested opioids while in the care of the same father, all three fathers were repeatedly incarcerated while the case was ongoing, and mother had a drug offense conviction and did not submit to any drug screens, while the children were doing well in their foster home settings, R.C. 2151.414(D).

**Custody.** In re B.J., 2021-Ohio-373 | 1st Appellate District | 2/10/21 Award of permanent custody of dependent child to agency on reasoning that it was in child's best interest is reversed where, inter alia, maternal grandfather expressed interest in caring for child since her birth, grandfather traveled from out of state multiple times for court proceedings, grandfather's visits with child went well, grandfather fully participated with home-study process, the home study completed on maternal grandfather indicates that he, along with his wife, are currently responsible for another child who is in high school, and grandfather has a steady income and a safe home where the child will have her own bedroom, R.C. 2151.414(D).

**Custody.** In re L.M., 2021-Ohio-395 | 2nd Appellate District | 2/12/21 Award of permanent custody of dependent and abused child to agency was not error where father failed to complete parenting classes and did not provide verification of employment or income, he did not consistently visit child or take advantage of bus passes to allow visits, and there were no viable relative placement options, while child is bonded with foster parents and their biological children, and child's health has improved to the point where he is in the 50th percentile for weight, R.C. 2151.414.

**Custody.** In re Z.C., 2021-Ohio-763 | 6th Appellate District | 2/12/21 Award of permanent custody of abused children to agency was not error where both parents were previously arrested for child endangering, they failed to provide suitable housing and did not successfully complete substance abuse counseling, and mother continued to associate with people who used drugs and alcohol, resulting in children's emotional trauma, so children needed a legally secure placement to continue with progress they made in foster home, R.C. 2151.414.

**Custody.** In re Cr.V., 2021-Ohio-762 | 6th Appellate District | 2/12/21 Award of permanent custody of dependent and neglected children to agency was not error since, inter alia, father did not successfully complete program for substance abuse issues, he was incarcerated for violating terms of probation by testing positive for illicit substances, his recent overdose demonstrated that he is not ready to be able to take care of children, and children are doing very well in their foster placement, R.C. 2151.414.

**Custody.** In re P.B., 2021-Ohio-414 | 12th Appellate District | 2/16/21 Award of legal custody of dependent child to foster parents was not error where the child is incorporated into home life of foster family, has close bonded relationship with foster parents, and foster parents will facilitate relationships with child's extended family including appellant-paternal grandfather whom child met only once, and appellant lives in another state, is unemployed and is disabled, R.C. 3109.04 and 2151.415.

**Custody.** In re B.M.S., 2021-Ohio-421 | 5th Appellate District | 2/16/21 Award of permanent custody of dependent child to agency was not error where there was testimony that mother was convicted of child endangering, she continued to test positive for drugs, she lost her housing and had inconsistent living arrangements, and she failed to visit child for long periods of time, while child is making satisfactory progress in his foster home where he has a bonded, positive relationship with other occupants, R.C. 2151.414.

**Custody.** In re A.S., 2021-Ohio-422 | 5th Appellate District | 2/16/21 Award of planned permanent living arrangement for dependent child via agency was not error where mother is unable to maintain sobriety, work, housing or consistent

relationship with child, child is aware of mother's issues and circumstances of case, child is doing well in her foster home and is moving toward independent living, she is employed part-time and is doing well in school, and she does not want to be adopted and does not want her parents' rights to be terminated, R.C. 2151.415.

**Anders brief.** In re A.I., 2021-Ohio-412 | 12th Appellate District | 2/16/21 Appeal is dismissed as wholly frivolous, Anders.

**Delinquency.** In re A.M., 2021-Ohio-432 | 3rd Appellate District | 2/16/21 In an adjudication of juvenile as delinquent for, inter alia, adult gross sexual imposition, R.C. 2907.05(A)(4), denial of motion to suppress was not error where In re D.B. does not apply to a charge for gross sexual imposition, and juvenile was not in custody when questioned by officer since juvenile's parents took him to sheriff's department voluntarily, parents were present during entire interview and permitted to enter the conversation, juvenile was told he was not under arrest and was allowed to go home with his parents.

**Custody.** In re D.G., 2021-Ohio-429 | 1st Appellate District | 2/17/21 Award of permanent custody of dependent child to agency was not error where mother declined to take medication for mental health management, which impaired her ability to care for child, and child stated that he was not ready to return to mother's care because he did not believe she would change her behavior, R.C. 2151.413(A) and 2151.414; also, mother expressly waived the 90-day R.C. 2151.35(B)(1) deadline for dependency adjudication.

**Delinquency.** In re N.S., 2021-Ohio-427 | 1st Appellate District | 2/17/21 Following adjudication by admission of juvenile as a delinquent for adult grand theft of a motor vehicle, subsequent adjudication of juvenile as delinquent for violating probation was error because he was never properly placed on probation since entry to "Place on probation for investigation" does not contain any order that the juvenile comply with any terms or conditions of probation.

**Custody.** In re D.F., 2021-Ohio-446 | 10th Appellate District | 2/18/21 Award of permanent custody of dependent child to agency was not error where mother struggled to maintain housing and

employment, no alternative placements with a relative were found, and the child expressed fear of mother and is upset after visits with her, while child is comfortable in foster home and is bonded with foster parents with whom he lived his entire life, and foster parents have applied to adopt child's biological brother and will adopt child if possible, R.C. 2151.414.

**Custody.** In re R.H., 2021-Ohio-458 | 6th Appellate District | 2/19/21 Award of permanent custody of child to agency was not error where mother failed to complete substance abuse services and mental health treatment, she had trouble maintaining housing, and her visitation with child was inconsistent, while child was placed with foster family who adopted her biological sibling, and child is thriving in the stable environment, R.C. 2151.414; mother's relative by marriage did not file a motion for custody or have any contact with the child.

**Custody.** In re M.E., 2021-Ohio-450 | 1st Appellate District | 2/19/21 Award of permanent custody of one child to agency and legal custody of another child to a relative was not error where both children were adjudicated neglected and dependent, mother was unable to maintain consistent housing, she struggled with anger and mental illness which made visits with children difficult, and she was not equipped to provide for one child's special needs and intended to discontinue his medications if she regained custody, while children are doing well in their placements, R.C. 2151.414.

**Appeal.** In re S.J., 2021-Ohio-471 | 11th Appellate District | 2/22/21 Appeal of trial court's dismissal of grandfather's motion to modify order governing custody and visitation of grandchild is dismissed since grandfather raised only arguments on behalf of his daughter/child's mother and did not ask to intervene as a party, he does not qualify as a party pursuant to Juv.R. 2(Y) and therefore lacks standing, and he is not a lawyer and cannot act in a representative capacity, R.C. 4705.01.

**Custody.** In re A.E., 2021-Ohio-488 | 10th Appellate District | 2/23/21 Award of permanent custody of children to agency was not error where mother continued to use illegal drugs and failed to substantially remedy conditions that resulted in removal of children, and she failed to acquire parenting skills necessary to care for children, while

foster mother desires to adopt two of the children and will adopt the third if he is successfully released from residential care; also, mother's counsel was not ineffective for failing to object to hearsay testimony about positive drug screens because the drug screens were given minimal consideration, R.C. 2151.414.

**Dependent child.** In re K.R., 2021-Ohio-495 | 9th Appellate District | 2/24/21 Adjudication of child as dependent was not error where mother did not object to admission of autopsy report for child's sister who died of a skull fracture while co-sleeping with mother and child, the report was admitted not to determine definitive cause of sister's death, but to show that mother's conduct provided a home environment that was detrimental to child's well-being, and the time limit for dispositional hearing in R.C. 2151.35(B)(1) was tolled by legislation during the pandemic, R.C. 2151.04(C).

**Custody.** In re L.S., 2021-Ohio-510 | 8th Appellate District | 2/25/21 Award of permanent custody of dependent child to agency was not error where, although mother provided for child and completed parenting classes and drug treatment and continued to engage in services, child did not wish to visit or live with mother, mother failed to challenge court's findings under R.C. 2151.414(E), there were no other relatives besides mother with whom child could be placed, and there is no evidence that mother's participation in additional services would resolve conflict with child, R.C. 2151.353(A)(4) and 2151.414.

**Custody/Native American heritage.** In re D.E., 2021-Ohio-524 | 10th Appellate District | 2/25/21 Award of permanent custody of children to agency is reversed since, after it was determined under the Indian Child Welfare Act that mother had Native American heritage, the trial court failed to make proper inquiry, pursuant to 25 C.F.R. 23.107, to determine if it "knows or has reason to know" if the children were Indian children as defined in 25 U.S.C. Sec. 1903, and without making such "knows or has reason to know" determination, the court could not determine if the notice of right of intervention to relevant tribe(s) applied, 25 U.S.C. Sec. 1912(a), so the case is remanded for the trial court to make the proper inquiries.

**Custody.** In re Ar.C., 2021-Ohio-596 | 4th Appellate District | 2/26/21 Award of permanent custody of dependent children to agency was not error where



mother failed to substantially remedy conditions leading to children's removal, she is unable to provide children with a legally secure permanent placement, she failed to complete an alcohol and drug treatment program and continued to test positive for illegal substances, and maternal grandmother has health issues preventing her from appropriately caring for children, while children are making progress in foster homes, R.C. 2151.414.

**Custody.** [In re K.P., 2021-Ohio-552 | 5th Appellate District | 3/1/21](#) Award of permanent custody of dependent and abandoned child to agency was not error since child was never in physical custody of mother or father since birth, all mother's other children except an infant are in legal custody of others, mother did not actively participate in visitation with child, and mother continues to test positive for illegal substances, while child is bonded with foster parents, R.C. 2151.414(D).

**Custody.** [In re R.O., 2021-Ohio-595 | 5th Appellate District | 3/3/21](#) Award of permanent custody of dependent, neglected and abused child to agency was not error since parents failed to remedy conditions that caused child to be placed outside the home, father allegedly had unresolved chemical dependency, although father made some progress on his case plan, he did not understand child's special needs, and father lacked stable housing, while child had a strong bond with foster parents with whom he had lived since birth, R.C. 2151.414.

**Custody.** [In re C.D., 2021-Ohio-639 | 3rd Appellate District | 3/8/21](#) Award of permanent custody of neglected child to agency is affirmed since father was not denied due process where he was allowed to be present for permanent custody hearing by listening to testimony through his phone, he never specifically expressed desire to testify at the hearing, he was provided ample notice of the hearing and was represented by his attorney, and there is no indication that father was denied an attempt to testify or that any such denial was arbitrary, Juv.R. 41.

**Delinquency.** [In re T.S., 2021-Ohio-638 | 3rd Appellate District | 3/8/21](#) Following an adjudication by admission of juvenile as delinquent of adult rape in six consolidated cases and subsequent invocation of the adult portion of sentence, although the trial

court incorrectly stated in its opinion appellant's classification was that of a Public Registry Qualified Juvenile Offender Registrant, its judgment entries indicate the classification hearing was conducted pursuant to the procedure in R.C. 2152.83, and correctly ordered appellant "be classified a Tier III Juvenile Sex Offender Registrant."

**Custody.** [In re D.K., 2021-Ohio-682 | 9th Appellate District | 3/10/21](#) Award of permanent custody of child to agency was not error where mother failed to engage in substance abuse treatment, she admitted at time of hearing that she could not care for child, grandmother does not acknowledge extent of treatment that child requires for special needs, and grandmother's home was not approved as safe for child, while child is bonded with foster parents who are meeting her special needs, and her behavior has greatly improved, R.C. 2151.414.

**Custody.** [In re K.S., 2021-Ohio-694 | 8th Appellate District | 3/11/21](#) Award of permanent custody of children to agency is affirmed where separate counsel for children was not warranted because they did not repeatedly express a desire to live with mother against guardian ad litem's recommendations, mother failed to provide a viable residence for a significant period of time, obviating the need for guardian ad litem to conduct a home visit, and mother did not improve in her childcare abilities, while children are bonded with foster parents, R.C. 2151.414.

**Custody.** [In re J.S., 2021-Ohio-714 | 10th Appellate District | 3/11/21](#) Award of permanent custody of child to agency was not error where child's father had abandoned him, mother failed to attend visits with child, she failed to understand and participate in child's counseling and treatment, and her own mental health issues impede her ability to care for child, while child has good relationship with foster parents and wants to be adopted, R.C. 2151.414.

**Right to counsel.** [In re J.H., 2021-Ohio-700 | 8th Appellate District | 3/11/21](#) In custody action remanded to trial court for the limited purpose of establishing mother's visitation with child, denying mother's motion to modify custody and granting visitation with one child is affirmed since claim that mother was deprived of right to counsel is meritless where Juv.R. 4 does not create a right to an appointed counsel in cases in which

that right is not otherwise provided for by constitution or statute, mother did not object to the magistrate's decision on the basis of lack of counsel, and mother did not file a transcript so it is unknown if mother requested counsel at hearing.

**Custody.** [In re L.G., 2021-Ohio-743 | 5th Appellate District | 3/11/21](#) Award of permanent custody of children to agency was in children's best interest where, inter alia, mother's case plan required her to engage in mental health and substance abuse treatment, obtain sobriety and attend parenting classes after obtaining sobriety, but she failed to adequately engage in those services and was subsequently terminated from substance abuse treatment program, and she also had no stable housing or employment, R.C. 2151.414(D).

**Custody.** [In re L.G., 2021-Ohio-744 | 5th Appellate District | 3/11/21](#) Award of permanent custody of children to agency was in children's best interest, and trial court did not err in denying father's motion to extend temporary custody where, inter alia, father failed to comply with random drug screens, failed to engage in treatment with counseling and incurred new felony charges four months after being released from a halfway house, and also father minimized or did not have insight into his children's identified needs and challenges, R.C. 2151.414(D).

**Delinquency.** [In re T.T., 2021-Ohio-759 | 6th Appellate District | 3/12/21](#) Following admission of delinquency to adult murder, R.C. 2903.02(B), and plea of adult murder, R.C. 2903.02(B) and (D), with a mandatory serious youth offender specification, appellant's admission to county center for adolescent services established for female felony delinquents constituted admission "to a department of youth services facility," R.C. 2152.14(E)(1), and sufficient evidence supported the trial court's conclusions that juvenile engaged in acts proscribed in R.C. 2152.14(A)(2) and was unlikely to be rehabilitated.

**Custody.** [In re K.M.W., 2021-Ohio-736 | 2nd Appellate District | 3/12/21](#) Award of permanent custody of dependent children to agency was not error where mother failed to complete her case plan objectives, including mental-health assessment, and did not demonstrate an ability to consistently care for children, she did not visit children or maintain contact with them prior to hearing, and she failed to appear at hearing without

notice or explanation, while children are well integrated into foster families which desire to adopt them, R.C. 2151.414.

**Custody.** In re J.B., 2021-Ohio-807 | 10th Appellate District | 3/16/21 Award of permanent custody of dependent children to agency was not error where mother waived her request that the court conduct an in-camera interview of children when she failed to object or remind the court she had requested one, one child's young age and speech limitations prevented him from communicating his wishes regarding placement, appointment of separate counsel for other child was not an indication that he had expressed a wish to live with mother, and mother has no appreciation for child's weight and food issues, R.C. 2151.414.

**Custody.** In re R.B.-B., 2021-Ohio-818 | 9th Appellate District | 3/17/21 Award of permanent custody of abused and dependent child to agency was not error where, although mother's former husband sought custody of child, as a non-parent he did not have the same fundamental rights as child's parents, the court was not required under R.C. 2151.414(E) to find that mother had abandoned child or that agency had made reasonable effort to place child with former husband, and child had close bond with and lived with kinship family which included two half-siblings who had been adopted.

**Custody.** In re R/G Children, 2021-Ohio-839 | 1st Appellate District | 3/19/21 Award of permanent custody of dependent and neglected child and dependent child to agency was in children's best interest where, inter alia, mother was a minor and had legal issues of her own, one child exhibited post-traumatic stress disorder after visits with mother and other child was diagnosed with separation anxiety disorder, but mother was unable to provide for children's special needs, while children bonded with their foster parents and foster siblings, and foster family continued to engage with therapy for the children.

**Custody.** In re A.O., 2021-Ohio-880 | 6th Appellate District | 3/19/21 In custody dispute where father sought transfer of jurisdiction to state where he lives, trial court did not err in transferring the case since father was granted legal custody of child, child attends

school in that state, mother no longer lives in same county as trial court, magistrate's findings were carefully and independently reviewed, and although mother previously obtained temporary protection order against father, the case was dismissed and parents are no longer in a relationship with each other, R.C. 3127.21.

**Custody.** Robinson v. Schreiber, 2021-Ohio-903 | 11th Appellate District | 3/22/21 In custody dispute, trial court did not err in finding child's mother in contempt for violation of parenting time exchange order, which resulted in a significant loss of parenting time for father where, inter alia, mother's claim that she was intimidated by father is meritless since there is no evidence that her participation in exchanges would have subjected her to any risk of physical or serious psychological harm, and claim that she was unavailable due to her work schedule is also meritless since she was not at work on a number of exchange days.

**Anders brief.** In re J.R., 2021-Ohio-893 | 12th Appellate District | 3/22/21 In an appeal by juvenile adjudicated delinquent, appeal is dismissed as wholly frivolous, Anders.

**Delinquency.** In re E.G., 2021-Ohio-917 | 5th Appellate District | 3/22/21 In an adjudication of juvenile as delinquent of adult obstructing official business, appellant's juvenile-father's claim that his son received ineffective assistance of counsel and that the court did not inform his son of his right to counsel cannot be considered because the father has no standing to raise issue where he suffered no prejudice in the juvenile court's proceedings since he is advocating for his son, not himself and, moreover, juvenile was represented by counsel during all the proceedings, including the appeal.

**Custody.** In re B. Children, 2021-Ohio-935 | 1st Appellate District | 3/24/21 Award of permanent custody of children to agency was not error where, inter alia, mother failed to sufficiently comply with or complete ordered services or demonstrate behavioral change required to care for children, she suffers from long-term mental health issues that interfere with her functioning, she continues to use drugs, and she has been repeatedly accused of violent behavior involving a significant other, while children are doing well with relative caregivers, R.C. 2151.414.

**Custody.** In re R.K., 2021-Ohio-949 | 8th Appellate District | 3/25/21 Award of permanent custody of neglected children to agency was in children's best interest where, inter alia, mother has mental illness and substance abuse issues and was incarcerated for a period of a year, and alleged father has a history of drug-related offenses and is not involved with the children, while child who is old enough to express herself indicated that she wishes to remain in current placement, R.C. 2151.414(D).

**Custody.** In re M.A., 2021-Ohio-948 | 8th Appellate District | 3/25/21 Award of permanent custody of children to agency was not error where father had minimal participation in visitation and completion of case plan, he failed to provide documentation regarding participation in drug treatment and domestic violence plans, his visitation with children had been suspended for inappropriate behavior, his relatives were found to be unsuitable for placement of children, and children are adjusting well in their placements, R.C. 2151.414.

**Custody.** In re E.S., 2021-Ohio-955 | 10th Appellate District | 3/25/21 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, father only completed one of five case plan objectives, he missed many drug screens but tested positive for drugs and alcohol in almost all the screens he did complete, he failed to protect children from harm or exposure to drug abuse, and his housing was not appropriate, safe and stable, R.C. 2151.414(D).

**Appeal.** In re K.S., 2021-Ohio-1106 | 4th Appellate District | 3/26/21 In a dependency adjudication and award of legal custody of children to maternal grandfather, stepmother's appeal is dismissed since she is not party to the case pursuant to Juv.R. 2(Y) and lacks standing to appeal denial of her motion to vacate, and she did not attempt to intervene in the case; father's appeal is also dismissed since he failed to timely appeal dependency adjudication, and shelter care decisions are interlocutory orders that merged into dependency adjudication.

**Custody.** In re M.G., 2021-Ohio-1000 | 12th Appellate District | 3/29/21 Award of permanent custody of dependent child to agency was not error since mother's circumstances did not change since the child was initially removed from her care, mother continues to have substance

abuse and mental health issues, and she lacks stable employment, income and housing, while the child is doing well in a stable and secure foster home, R.C. 2151.414.

**Continuance.** Gray v. Jorz, 2021-Ohio-1010 | 11th Appellate District | 3/29/21 Denial of father's motion for a continuance to obtain counsel for hearing on motion to modify parenting plan was not error where father had one year to retain counsel and was given ample opportunity by the court, father should have known that the guardian ad litem's report would not be favorable to him, and father had previously conducted appropriate cross-examination and direct examination in the form of his own testimony, so request for a continuance was not arbitrary, unreasonable or unconscionable and did not constitute an abuse of discretion.

**Custody.** In re C.C., 2021-Ohio-1066 | 6th Appellate District | 3/29/21 Award of permanent custody of dependent child to agency was in child's best interest where, inter alia, mother was incarcerated for child endangering and there were concerns about her housing, income and substance abuse and where father's criminal record, including rape conviction, was troubling, and father had not taken appropriate steps to prepare for the possibility of obtaining custody of child, while child is thriving in his foster home, all his needs are met and the agency has identified the foster parents as a potential adoptive home, R.C. 2151.414(D).

**Custody.** In re A.H., 2021-Ohio-1040 | 10th Appellate District | 3/30/21 Award of permanent custody of neglected children to agency was in children's best interest where, inter alia, mother had numerous dogs and cats in house and children's clothes had animal urine and feces on them, the house had bed bugs that kept one child from sleeping, and one child had a reading disability and the other was failing in English and math, while the children were doing well at their new schools and adjusting very well in the foster home, R.C. 2151.414(D).

**Custody.** In re S.B.J. v. Conolly, 2021-Ohio-1161 | 7th Appellate District | 3/30/21 In custody action in which mother sought reallocation of parental rights, trial court did not err in finding that there were no change of circumstances warranting reallocation since psychotherapist's testimony failed

to confirm mother's accusations as to father's abuse or neglect of child, collective testimony established that child is doing well in father's home, and guardian ad litem did not testify under oath and was not subject to cross-examination, R.C. 2151.23(F)(1) and 3109.04.

**Custody.** In re R., 2021-Ohio-1044 | 1st Appellate District | 3/31/21 Award of permanent custody of child to agency was in child's best interest where, inter alia, mother was not engaging in any services as requested by the agency, was not consistently meeting with the caseworker, had not completed a second diagnostic assessment, and did not have stable housing or employment, while current foster parent effectively managed behavior and mental health needs of child, who had significant mental health and behavioral issues, R.C. 2151.414(D).

**Custody.** In re S. & L. Children, 2021-Ohio-1045 | 1st Appellate District | 3/31/21 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother remained married to husband after his substantiated history of sexually abusing a child whom he fathered with an adult daughter of mother, while the children formed a positive bond with their caregiver with whom they had lived for an extended period of time and caregiver tended to the children's behavioral and emotional needs by ensuring their participation in therapy and their educational needs by setting up necessary individualized educational plans, R.C. 2151.414(D).

**Delinquency.** In re M.H., 2021-Ohio-1041 | 1st Appellate District | 3/31/21 In an adjudication of delinquency of, inter alia, two offenses of adult assault on a peace officer during an investigation, denial of motion to suppress was not error where record shows no evidence was obtained as a result of appellant's arrest, and juvenile was simply seeking to defend the charges against her and to justify her conduct by establishing the affirmative defense of an officer's alleged use of excessive force, but the sufficiency of an affirmative defense cannot properly be established through a pretrial motion.

**Transcript.** In re J.C.F., 2021-Ohio-1057 | 11th Appellate District | 3/31/21 In award of permanent custody of children to agency, trial court did not err in

declining to provide father extra time due to the pandemic to file a transcript since he did not request an extension to file the transcript in compliance with local rule nor did he provide the trial court with an explanation as to the tardiness of his request for state payment of the transcript, and father was able to timely file objections to magistrate's decision and has not demonstrated that the pandemic interfered with his ability to timely file a transcript or properly request an extension.

**Custody.** In re W.E., 2021-Ohio-1069 | 6th Appellate District | 3/31/21 Award of permanent custody of dependent child to agency was not error where, inter alia, mother failed to complete case plan services when she refused to engage in a second mental health assessment after the results from the first assessment were effectively lost, and when she participated in an assessment as part of a separate delinquency matter, she omitted important details and provided inaccurate information, while child is doing well in foster care and is in need of legally secure, permanent placement, so competent, credible evidence exists to support trial court's termination of parental rights, R.C. 2151.414(D)(1).

**Custody.** In re M.A., 2021-Ohio-1078 | 10th Appellate District | 3/31/21 Award of custody of dependent child to agency is affirmed since mother's claim that she was deprived of due process because she does not understand English and was not provided an interpreter or was not given a case plan written in her native language is without merit since she did not object to magistrate's decision on this point and transcript from dependency hearing demonstrates that mother responded to magistrate's questions appropriately in English, R.C. 2311.14(A)(1) and Sup.R. 88.

**Custody.** In re S.B., 2021-Ohio-1091 | 8th Appellate District | 4/1/21 Award of permanent custody of dependent children to agency was not error where one child was adjudicated abused, mother was previously convicted of child endangerment of one of her children, resulting in a no-contact order and supervised visitation, and mother engaged in substance abuse services but continued to test positive for drugs, while children are bonded with foster parents and have a positive relationship with them, R.C. 2151.414.

**Bindover.** State v. Martin, 2021-Ohio-1096 | 8th Appellate District | 4/1/21 In bindover of juvenile from juvenile court to general division and plea to, inter alia, involuntary manslaughter, the juvenile court did not err by granting state's motion for mandatory bindover where a witness testified that she saw defendant holding a gun and officers found shell casings in the area that defendant was present when the shooting occurred, and the state did not argue the complicity concept to prove operability of the weapon as defendant claims.

**Custody.** In re H/B Children, 2021-Ohio-1109 | 1st Appellate District | 4/2/21 Award of legal custody of dependent and neglected children to godmother was not error, even though the court departed to some extent from the magistrate's findings, where mother was convicted of endangering children after child was injured in domestic dispute between parents and mother failed to make significant progress in her mental-health treatment and there were gaps in her attendance, while two of the children have special needs and are thriving under care of godmother, and mother will be able to visit and have relationship with children, R.C. 2151.414.

**Dependency.** In re M.W., 2021-Ohio-1129 | 12th Appellate District | 4/5/21 Adjudication of children as dependent was not error where mother ostensibly moved from another state to avoid investigation into her drug use, drugs were found in the home when her boyfriend obtained police intervention, she and boyfriend refused to submit to drug screens, mother's consumption of alcohol led to domestic turmoil, she caused an injury to the child's head, and she refused to cooperate with the agency and did not permit children to participate in forensic interviews until ordered by the court, R.C. 2151.04(C).

**Custody.** In re J.C., 2021-Ohio-1133 | 3rd Appellate District | 4/5/21 Award of legal custody of dependent children to maternal aunt was not error where mother completed mental health assessment but did not follow up with treatment, her housing had no beds or room for children, and her cognitive delays and issues with anger hindered her ability to care for children, while children are doing well with aunt who facilitates visits with mother; court was not required to extend temporary custody arrangement, R.C. 2151.353.

**Custody.** In re K.F., 2021-Ohio-1183 | 12th Appellate District | 4/7/21 Award of permanent custody of neglected child to agency was not error where father made threats against foster parents and father was unable to develop normal relationship with child while incarcerated, neither grandfather nor foster parents filed a motion requesting legal custody, so that issue was not before the juvenile court, and the child is thriving in foster care and is bonded with foster family, R.C. 2151.414.

**Custody.** In re K.G., 2021-Ohio-1182 | 12th Appellate District | 4/7/21 Award of permanent custody of dependent children to agency was not error where children were abandoned by father, mother's visits with children triggered adverse behavior changes in children, and mother continued to have substance abuse issues, failed to provide suitable housing and is unable to provide stability for children, while children are in the same foster home with foster parents who love them, R.C. 2151.414.

**Custody.** In re B.M., 2021-Ohio-1196 | 8th Appellate District | 4/8/21 Award of permanent custody of child to agency was not error where father has a history of domestic violence including convictions, he struggles with substance abuse, and he continues to engage in negative behaviors in spite of attending anger management and parenting classes, while child is comfortable in caregiver's home, R.C. 2151.414.

**Custody.** In re Ar.S., 2021-Ohio-1200 | 8th Appellate District | 4/8/21 Award of permanent custody of children to agency was error where, although placement with either parent was not possible, legally secure placement could be found with children's aunt with whom children expressed desire to live, and trial court is instructed to give aunt another opportunity to complete the statement of understanding required by 2151.353(A) (3) and the rehabilitation standard form, so legal custody to aunt can be effectuated, R.C. 2151.414.

**Bindover.** In re D.M.S., 2021-Ohio-1214 | 2nd Appellate District | 4/9/21 In a delinquency proceeding of adult reckless homicide in which the state moved for a discretionary transfer to adult court, the trial court erred in holding that the state failed to establish probable cause that juvenile had committed adult reckless homicide where there was sufficient evidence that the actions taken by juvenile while acting out a first-person

video game created a substantial risk of harm to his friends and that he heedlessly disregarded that risk by pointing the gun at his friends, R.C. 2152.10(B) and 2152.12(B).

**Delinquency.** In re J.K.O., 2021-Ohio-1215 | 2nd Appellate District | 4/9/21 Following adjudications of juvenile as delinquent of multiple adult sexual offenses and kidnapping in separate proceedings on separate occasions, the juvenile court did not err in not giving juvenile credit for the time he spent in detention in the first proceeding pending disposition in the later delinquency actions where there is nothing in the record to indicate that detention was related to the later cases.

**Immunization.** In re P.C., 2021-Ohio-1238 | 3rd Appellate District | 4/12/21 In custody dispute involving dependent children, judgment granting mother's motion to have children vaccinated and denying father's motion against vaccination is affirmed since R.C. 3313.671 requires proof of required immunizations for a child to attend school, and father did not establish any of the exceptions that include objection on religious grounds or a certification in writing by a physician that vaccination is medically contraindicated.

**Custody.** In re A.P., 2021-Ohio-1229 | 9th Appellate District | 4/12/21 Denial of motion to remove dependent child from the legal custody of father is affirmed where child was temporarily placed in the custody of mother during an investigation of father for allegations of sexual misconduct which ended for lack of evidence, and mother failed to demonstrate a change of circumstances to modify or terminate the order of legal custody to father, as required under R.C. 2151.42.

**Custody.** In re Baby Boy N., 2021-Ohio-1272 | 10th Appellate District | 4/13/21 Award of permanent custody of abused, neglected and dependent child to agency was not error where putative father, who had lengthy incarceration preventing placement with child, failed to object to magistrate's decision regarding best interest factors, R.C. 2151.414(D), child was removed from mother's custody at birth after testing positive for illegal substances, and child had no bond with any biological family members but was well-bonded with foster family, R.C. 2151.417; father did not show that counsel was ineffective.

**Custody.** [In re O.M., 2021-Ohio-1310 | 5th Appellate District | 4/14/21](#) Award of permanent custody of dependent child to agency was not error where father continued to test positive for illicit substances and made no progress in substance abuse treatment, he failed to meaningfully comply with case plan, he never addressed concerns underlying the removal of child, and further extension of case would be harmful to child, while child has adjusted to her placement and is integrated into her foster family, R.C. 2151.414.

**Custody.** [In re J.C., 2021-Ohio-1476 | 7th Appellate District | 4/14/21](#) Award of legal custody of one child to paternal grandparents and permanent custody of other children to agency was not error where mother failed to comply with her case plan, she did not provide adequate housing or maintain a clean and safe environment, she failed to visit with children or participate in legal proceedings, and although all children are bonded with foster parents and thriving in foster home, placing one child in legal custody of grandparents was the least restrictive alternative available, R.C. 2151.414.

**Custody.** [In re S.A., 2021-Ohio-1305 | 8th Appellate District | 4/15/21](#) Award of permanent custody of child to agency was not error where mother demonstrated a lack of commitment by failing to regularly support or communicate with child, she was unwilling to provide basic necessities for child with special needs, she failed to successfully complete case plan, she will be confined to sober living facility for at least six months, and she has not adequately addressed her substance abuse issues, while child is very bonded with both foster parents who have cared for him since his release from hospital and child also has strong support from relatives of the foster caregivers, R.C. 2151.414.

**Custody.** [In re R.S.J., 2021-Ohio-1332 | 2nd Appellate District | 4/16/21](#) Award of permanent custody of child to agency was not error where mother had a history of making poor choices, which led to the death of her older child, great grandmother failed to raise specific objections to magistrate's decision, she had not seen child for over two years and had no bond with him, and agency was not required to evaluate great grandmother as placement, while child was bonded to foster parents who

wished to adopt him, and agency found no appropriate relative placement, R.C. 2151.413 and 2151.414.

**Disposition/Service.** [In re J.M., 2021-Ohio-1415 | 4th Appellate District | 4/19/21](#) Adjudication of children as abused and temporarily placing each child with a different relative is affirmed since the juvenile court properly proceeded directly from adjudicatory hearing to dispositional hearing, R.C. 2151.35(B)(1), where father was served prior to the adjudicatory hearing with all documents required for the dispositional hearing; the agency alleged that it tried numerous ways to ascertain father's address without success, father's address was "unknown" and was incapable of being ascertained using reasonable diligence, and trial court was permitted to proceed with service by posting and mail under Juv.R. 16(A).

**Paternity.** [In re K.M.C., 2021-Ohio-1612 | 4th Appellate District | 4/19/21](#) In action by appellants-biological parents of deceased husband of child's mother, asserting entitlement to grandparent visitation, trial court erred in dismissing action since mother failed to raise issue of child's paternity after her husband died, she agreed that appellants were child's biological grandparents in original custody litigation and is barred by res judicata from now raising question of paternity, and even though paternity was misrepresented in prior proceedings, R.C. 3111.03 provides presumption of paternity to mother's husband at time of birth.

**Continuance.** [In re I.N., 2021-Ohio-1406 | 8th Appellate District | 4/22/21](#) In litigation involving permanent custody of dependent children, trial court did not err in denying mother's motion for a continuance where, inter alia, agency's motion for permanent custody had been pending for a year, the case had previously been continued, mother's hearing-day notification to case worker of need to be quarantined lacked credibility, and both case worker and guardian ad litem doubted mother and reminded the court that mother made no effort to contact her new attorney; multiple findings supported trial court's determination that award of permanent custody was in children's best interest, and a continuance would not have changed the trial court's decision, R.C. 2151.414(D).

**Custody.** [In re J.C., 2021-Ohio-1453 | 3rd Appellate District | 4/26/21](#) Award of legal custody of dependent child to paternal aunt was not error since mother did not request an extension of temporary custody and the court was not required to extend temporary custody, mother struggled to provide stable housing and to maintain employment, and she did not cooperate with aunt, while child has done well in the care of aunt, R.C. 2151.011 and 2151.353.

**Custody.** [In re J.G., 2021-Ohio-1479 | 5th Appellate District | 4/28/21](#) Award of permanent custody of dependent child to agency was not error where mother abandoned child by failing to contact or support child, she did not attempt any form of reunification, and she moved to another state, while child has been in foster home almost since birth and has significant bond with foster mother, R.C. 2151.414.

**Custody.** [In re E.L., 2021-Ohio-1495 | 8th Appellate District | 4/29/21](#) Award of permanent custody of abused and dependent child to agency was not error since neither parent maintained sobriety, mother failed to consistently show improvements with her substance abuse treatment, she failed to complete or benefit from her parenting classes, and there was no plain error in testimony regarding mother's drug test results, while child is bonded with her maternal grandfather and his wife and is doing well in their custody, R.C. 2151.414.

**Custody.** [In re Z.R., 2021-Ohio-1494 | 8th Appellate District | 4/29/21](#) Award of permanent custody of neglected child to agency was not error since mother failed to demonstrate ongoing sobriety, she failed to complete her parenting-education program, she did not attend any of child's physical and occupational therapy sessions despite being provided transportation to and from appointments, and she struggled to provide appropriate housing and did not have a verified source of income, while child is bonded with his caregiver and other children in home, and no relatives were found who could provide a safe and stable home, R.C. 2151.414.

**Delinquency.** [In re Z.M., 2021-Ohio-1492 | 8th Appellate District | 4/29/21](#) Following an adjudication of juvenile as delinquent for adult gross sexual imposition and kidnapping and imposition of, inter alia, a suspended commitment to youth services, two

## Juvenile Law (continued)

years' probation and classification as a sex offender and subsequent termination of probation, denial of motion for declassification was premature since the court failed to hold the mandatory completion-of-disposition hearing, and thus the court lacked jurisdiction to rule on the motion, R.C. 2152.84.

**Disposition.** In re K.D., 2021-Ohio-1538 | 12th Appellate District | 5/3/21 Disposition order imposing four-year community control term on child and releasing child into the temporary custody of agency was error since the court did not give agency notice of court's intended dispositional order, as required by R.C. 2151.3510.

**Custody.** In re A.H., 2021-Ohio-1577 | 5th Appellate District | 5/4/21 Award of permanent custody of child to agency was error where father made oral motion pursuant to Interstate Compact on the Placement of Children (ICPC) requesting study of his home in another state, he engaged in case plan services and attended all scheduled visitations with child, and although father did not request ICPC home study until after permanent custody hearing commenced, his actions from the beginning revealed his desire to be reunified with his child, R.C. 2151.419.

**Custody.** In re N.R., 2021-Ohio-1589 | 8th Appellate District | 5/6/21 Award of permanent custody of child to agency was not error where mother failed to satisfy the substance abuse portion of her case plan, she failed to establish stable housing for any consistent period of time, she did not demonstrate sobriety or submit to drug screening, and the child's best interests require permanency and a safe and secure environment, R.C. 2151.414.

**Custody.** In re L.M., 2021-Ohio-1630 | 12th Appellate District | 5/10/21 In custody proceedings in which grandmother sought legal custody of dependent children, trial court did not err in denying her motions to intervene since grandmother failed to obtain any legal right to custody or visitation, she never assumed parental duties for benefit of children to show permissive intervention, and her motion was not accompanied by necessary pleadings, Civ.R. 7(A) and 24(C); grandmother did not need to intervene but could move for visitation or legal custody of children.

**Bindover.** State v. Fuell, 2021-Ohio-1627 | 12th Appellate District | 5/10/21 In a mandatory transfer of juvenile to adult court and conviction by plea of murder, the juvenile court's admission of cell tower analysis did not violate juvenile's claimed Confrontation Clause rights to confront the individual who prepared the analysis since a transfer hearing is non-adjudicatory since it does not result in any conclusive factual findings that could be used at a subsequent trial, R.C. 2152.12(A)(1)(a)(i); also, a mandatory sentence of life in prison with the possibility of parole after 15 years was not plain error.

**Delinquency.** In re J.G., 2021-Ohio-1624 | 3rd Appellate District | 5/10/21 In an adjudication by admission of juvenile as delinquent for adult sexual offenses, the juvenile court did not err in entering a serious youthful offender dispositional sentence where it made the required R.C. 2152.13(D)(2)(a)(i) findings and concluded that the programming and resources available in the juvenile justice system were not adequate to rehabilitate the juvenile based on the nature of the offenses; also discussed, restitution.

**Custody.** In re D.T., 2021-Ohio-1650 | 9th Appellate District | 5/12/21 Award of permanent custody of dependent children to agency was in children's best interest where, inter alia, mother relinquished her parental rights and both children exhibit severe anxiety immediately prior to visits with father, they engage in self-harm during the drive to the visitation center, and they have unbuckled themselves from their car seats during the ride to delay or avoid attending visits with father, while the children are closely bonded with one another and all members of foster family, and their violent behavior towards people and animals has decreased in foster care, R.C. 2151.414(D).

## Landlord and Tenant

**Relief from judgment.** Wayne Metro. Hous. Auth. v. Ford, 2021-Ohio-269 | 9th Appellate District | 2/1/21 In forcible entry and detainer action in which appellant-tenant did not respond to any notices or filings in trial court prior to its judgment in favor of appellee, court did not err in denying appellant's motion for relief from judgment without a hearing since appellant failed to assert a meritorious defense where, inter alia, claim that she was medically excused from performing community service, required under lease, was without merit because she

had agreed to the requirement and never before claimed she was medically excused, Civ.R. 60(B).

**Appeal.** Ford v. Crawford, 2021-Ohio-454 | 2nd Appellate District | 2/19/21 In landlord's forcible entry and detainer action alleging that tenant failed to pay rent or vacate premises, judgment granting landlord restitution of premises is affirmed since tenant's brief fails to articulate an assignment of error with supporting argument, but instead tenant asserts that the parties resolved their dispute so that he remains in possession of property.

**Escrow rent.** Chasteen v. Dix Road Property Mgt., L.L.C., 2021-Ohio-463 | 12th Appellate District | 2/22/21 In tenant's action to recover rent he placed in escrow after apartment he rented was flooded with sewage and not repaired to his satisfaction, trial court did not err in releasing rent escrow funds to tenant where testimony showed that landlord did not make apartment safely habitable until after tenant had moved out, tenant's testimony that heavy rain and recent plumbing repairs had caused the flooding was more believable than testimony that tenant had flushed disallowed items, and tenant provided landlord with written notice pursuant to R.C. 5321.07(A).

**Relief from judgment.** Abram v. Eldermen Properties, L.L.C., 2021-Ohio-523 | 10th Appellate District | 2/25/21 In tenant's action against landlord for flood damage to personal property and failure to return security deposit, trial court did not err in denying landlord's motion for relief from judgment without a hearing where landlord failed to file objections to magistrate's decision pursuant to Civ.R. 53(D), Civ.R. 60(B) motion was not automatically entitled to a hearing, and landlord's neglect was not excusable because of inaction in seeking continuance, failing to communicate and deliberately failing to appear at a scheduled hearing.

**Forcible entry and detainer.** Springboro Commons Retirement Villa, Inc. v. Feltner, 2021-Ohio-544 | 12th Appellate District | 3/1/21 In retirement home's forcible entry and detainer action against resident, alleging that resident had violated terms of lease, trial court did not err in granting summary judgment to resident since retirement home continued to accept resident's rent payments after providing notice of termination of tenancy, thereby waiving

termination notice, R.C. 5321.11 and 1923.04.

**Lease default.** Frenchtown Square Partnership v. Nick Ent's., Inc., 2021-Ohio-663 | 11th Appellate District | 3/8/21 In shopping mall's action for money damages alleging that restaurant defaulted on its commercial lease, summary judgment in favor of mall was not error since restaurant's claim that mall was not properly promoted, in breach of its duty to tenants, is of no avail where the lease language specifically relieved mall from any duty to mitigate damages, and restaurant failed to request an oral hearing or to set forth affirmative defense of unconscionability, thereby waiving defense on appeal.

**Judgment/Appeal.** Concrete, Inc. v. Willowick, 2021-Ohio-658 | 11th Appellate District | 3/8/21 In tenant-company's action seeking declaration that it had complied with terms of lease, resulting in judgment that tenant was in wrongful possession of the property and a writ of restitution, which tenant appealed, trial court's subsequent denial of tenant's motion to have property returned is affirmed since clerk's failure to serve notice of the wrongful possession judgment entry, Civ.R. 58(B), did not affect validity of the judgment or time for appeal, and the law of the case doctrine applies because the court previously denied a substantively similar motion, finding that the issue of possession of premises was moot, R.C. 1923.14.

**Negligence/Statutory duty.** Goodman v. Dan Rich, L.L.C., 2021-Ohio-690 | 8th Appellate District | 3/11/21 In tenant's action, arising from injuries sustained when he fell on patio pavers, claiming negligence and that landlord violated R.C. 5321.04(A)(1), which requires landlords to comply with, inter alia, building, health and safety codes, trial court did not err in granting summary judgment to landlord since the condition of the patio was open and obvious and there was no evidence of a defective condition that rendered the premises unfit and uninhabitable where tenant and family regularly used the patio.

**Lease.** Wroblesky v. Hughley, 2021-Ohio-1063 | 11th Appellate District | 3/31/21 In commercial landlord's breach of lease action against tenants for failure to pay monthly rent where tenants claim that issuance of a liquor permit was a condition precedent to enforcement

of the lease, summary judgment for landlord was not error since the lease did not specify that issuance of the permit was a condition precedent, the doctrine of frustration of purpose has not been adopted in Ohio, and even if it were available, the property was to be used as a restaurant and bar, lack of a permit could restrict purpose of lease, but not totally frustrate it, and risk of government delay was allocated to tenants.

**Forcible entry and detainer.** Preston v. Thornton, 2021-Ohio-1178 | 9th Appellate District | 4/7/21 In forcible entry and detainer action, issuance of writ of restitution, which has not been returned, is affirmed where tenant's argument that he was deprived of right to a jury trial is meritless since he did not demand a jury under R.C. 1923.10 and waived that right; tenant makes no argument regarding his eligibility for or the applicability of a moratorium on evictions imposed in response to the COVID-19 pandemic.

**Default judgment.** 1031 Properties, L.L.C. v. Bearden, 2021-Ohio-1232 | 12th Appellate District | 4/12/21 In landlord's eviction action against tenants seeking writ of restitution and damages after tenants defaulted on lease, trial court erred in vacating default judgment entered against tenants since tenants failed to establish that their failure to answer complaint was excusable, they were served with complaint and attended initial hearing, they did not introduce any evidence of compliance with installment agreement with landlord, and belief that landlord would not pursue its claim for damages does not excuse failure to file an answer, Civ.R. 55 (B) and 60(B).

**Res judicata.** Disher v. Bannick, 2021-Ohio-1331 | 2nd Appellate District | 4/16/21 In plaintiff's action for forcible entry and detainer and to quiet title to garage property that he claimed defendant agreed to rent, but not purchase, common pleas court erred in dismissing quiet title claim on reasoning that res judicata precluded both claims since res judicata properly precluded only the forcible entry and detainer claim that had been litigated in municipal court, but the quiet title claim survived since it had been dismissed by municipal court for lack of jurisdiction and was not barred by res judicata, R.C. 1901.18(A)(8).

## Natural Resources

**Mineral interests.** Erickson v. Morrison, 2021-Ohio-746 | Supreme Court of Ohio | 3/16/21 In complaint to quiet title to mineral interests in real property, the root of title and subsequent conveyances of the surface rights were made subject to a specific, identifiable reservation of mineral rights using the same language that created it, so the reservation of mineral rights outlined in deed was preserved from extinguishment, and it was not necessary for the reservation to state by whom the interest was originally reserved, R.C. 5301.49(A).

**Mineral interests.** O'Brandovich v. Hess Ohio Devs., L.L.C., 2021-Ohio-1287 | 7th Appellate District | 3/22/21 In plaintiffs-property owners' action to quiet title to property on which defendants claimed oil and gas rights, trial court did not err in granting defendants' motion to dismiss where easement language in original deed pertained mostly to coal extraction but was not inconsistent with development of oil and gas, and because deed is not ambiguous, extrinsic evidence plaintiffs sought to produce was not allowed and would unlikely be available due to age of deed, Civ.R. 12(B)(6).

**Mineral interests.** O'Kelley v. Rothenbuhler, 2021-Ohio-1167 | 7th Appellate District | 3/31/21 In plaintiff's action to quiet title to mineral interests in property owned by defendants, summary judgment in favor of defendants on counterclaim that mineral interest was extinguished by operation of Marketable Title Act was not error where, under the Blackstone inquiry, the reference to mineral interests in the only title transaction occurring following the root was general rather than specific and is susceptible of more than one interpretation, and therefore plaintiff's interest in minerals was not preserved, R.C. 5301.49.

**Mineral interests.** Tomechko v. Garrett, 2021-Ohio-1377 | 7th Appellate District | 4/2/21 In plaintiffs' action claiming adverse possession of defendants' half interest in oil and gas on property, trial court erred in separating deep rights from shallow rights and in denying adverse possession of deep rights to plaintiffs since, although the language of the deed reserved defendants' oil and gas interests, plaintiffs adversely possessed oil and gas when they entered into lease with gas company and authorized production, and because

## Natural Resources (continued)

of alteration of surface and subsurface from drilling, adverse possession of deep rights should follow shallow rights.

**Mineral interests.** McCombs v. Dennis, 2021-Ohio-1181 | 5th Appellate District | 4/5/21 In plaintiff's action to quiet title to heirs' severed mineral interests on property plaintiff owned, summary judgment in favor of plaintiff was not error where the Marketable Title Act (MTA) applies to severed mineral interests and not just royalty interests, the MTA is applied to extinguish heirs' mineral interests because there was no saving event in record chain of title preserving the interests, and severed mineral interests may be reunited with surface rights under both the MTA and the Dormant Mineral Rights Act, R.C. 5301.49 and 1.51.

**Settlement agreement.** RHDK Oil & Gas, L.L.C. v. Willowbrook Coal Co., 2021-Ohio-1362 | 5th Appellate District | 4/16/21 In plaintiff-oil company's action to enforce settlement agreement with defendant-coal company concerning interests in oil and gas leases, trial court did not err in adopting, with modifications, plaintiff's documents as comprehensive settlement documents since defendant failed to offer an alternative to plaintiff's documents, defendant did not describe how remaining disputes should be resolved, and defendant's conclusion that terms of document were inconsistent or in conflict with memorandum of settlement agreement was not demonstrated by evidence.

## Procedure

**Resignation.** In re Resignation of Cheselka, 2021-Ohio-236 | Supreme Court of Ohio | 2/1/21 Attorney resigns from the practice of law with disciplinary action pending.

**Judge disqualification.** In re Disqualification of Heiser, 2021-Ohio-628 | Supreme Court of Ohio | 2/1/21 Affidavit of disqualification of judge is denied where, although the judge formerly shared office space with the prosecutor in underlying action, a business or professional relationship that ended years ago does not require disqualification, there is no allegation that a personal relationship between the judge and the prosecutor has affected the judge's consideration of issues

in underlying or any other case, and although the judge's son is an assistant prosecutor, the son does not discuss cases with the judge and has never appeared before him, R.C. 2701.03.

**Judge disqualification.** In re Disqualification of Forchione, 2021-Ohio-627 | Supreme Court of Ohio | 2/4/21 Affidavit of disqualification of judge is denied since affiant's allegations that the judge, both prior to taking the bench and after, demonstrated animosity towards him are insufficient to show a strong personal bias against affiant or that judge would be unable to preside fairly over underlying case, affiant failed to substantiate alleged ex parte communication, and dissatisfaction with the judge's rulings in underlying case is not grounds for disqualification, R.C. 2701.03.

**Appeal.** Smith v. Ironwood at Shaker Run Condominium Owners' Assn., Inc., 2021-Ohio-346 | 12th Appellate District | 2/8/21 In resident's negligence and breach of contract action against condominium owners' association and related defendants, asserting that she was injured when she fell on unnatural accumulation of ice in parking lot, resulting in judgment in favor of resident on negligence claim, defendants' appeal is dismissed for lack of a final appealable order since there was no judgment on the contract claim, which was not mooted by the negligence decision, and the two claims were independent of one another, R.C. 2505.02 and Civ.R. 54(B).

**Judge disqualification.** In re Disqualification of Mallory, 2021-Ohio-626 | Supreme Court of Ohio | 2/8/21 Affidavit of disqualification of judge is denied where, although the judge's brother served as a courtroom judge when affiant appeared before the magistrate for arraignment, the magistrate did not render any judgments regarding affiant that day, and affiant failed to establish that the judge has hostile feelings toward him, has formed a fixed anticipatory judgment on any issue in underlying case or should be disqualified to avoid the appearance of partiality, R.C. 2701.03 and 2701.031.

**Judge disqualification.** In re Disqualification of Giulitto, 2021-Ohio-625 | Supreme Court of Ohio | 2/8/21 Affidavit of disqualification of judge is denied where affiant failed to establish that judge has hostile feelings toward him or has formed a fixed anticipatory

judgment on any issue in underlying case, many of affiant's concerns are matters of substantive or procedural law and should be raised on appeal rather than in affidavit of disqualification, and judge's impartiality is not in question merely because he inadvertently issued an entry during pendency of affiant's affidavit, R.C. 2701.03.

**Judge disqualification.** In re Disqualification of Russo, 2021-Ohio-1246 | Supreme Court of Ohio | 2/9/21 Underlying defendant's counsel-affiant was granted leave to file a supplement to original affidavit of disqualification, but affidavit of disqualification and supplemental affidavit are denied since disqualification is not a vehicle to contest matters of substantive or procedural law such as the judge's decision to grant default judgment against defendant based on a discovery sanction, and judge's dissatisfaction with defense's perceived dilatory tactics does not establish that the judge has disqualifying hostility or animosity toward the defense, R.C. 2701.03.

**Judge disqualification.** In re Disqualification of Sutula, 2021-Ohio-1208 | Supreme Court of Ohio | 2/10/21 Affiant-defense counsel's affidavit of disqualification of judge based on judge's voluntary recusal from unrelated case involving affiant's law firm is denied since judge's relationship with affiant's law firm in which he has retirement funds on deposit does not call into question his impartiality, law firm has no control over judge's retirement account, and judge's voluntary recusal from an earlier case involving a particular attorney or law firm does not automatically require the judge's disqualification from all other cases involving that attorney or firm, R.C. 2701.03.

**Expenses.** W.W. v. A.P., 2021-Ohio-377 | 8th Appellate District | 2/11/21 In action in which a civil protection order was issued to protect appellee and another person, trial court's award of expenses associated with contempt action against respondent is affirmed where respondent did not appeal finding of contempt, which was a final appealable order, and she cannot challenge award of expenses incurred in bringing the contempt proceedings, but trial court awarded all expenses to appellee, and the matter is remanded for trial court to correct its journal entry to designate the individual awards of expenses.



**Jurisdiction.** Mobley v. Supreme Court of Ohio, 2021-Ohio-391 | 10th Appellate District | 2/11/21 Dismissal by court of claims of plaintiffs' action asserting that the Supreme Court of Ohio violated their constitutional rights in dismissing their petitions for writs of habeas corpus was not error since the court of claims lacks jurisdictional authority to adjudicate constitutional claims, and plaintiffs' claims that the Supreme Court of Ohio had injured them in the regular performance of its duties were barred by judicial immunity, Civ.R. 12(B)(1) and 12(B)(6).

**Appeal.** Graham v. JPay, Inc., 2021-Ohio-401 | 5th Appellate District | 2/11/21 In plaintiff's action alleging unfair or deceptive consumer sales practices after encountering problems using defendant's electronic media services, resulting in dismissal of complaint, appeal is dismissed for lack of a final appealable order, despite trial court's Civ.R. 54(B) certification, since dismissal of complaint was without prejudice and plaintiff may plead his claims differently with specific factual allegations to rectify deficiencies in the pleadings, R.C. 2505.02.

**Service.** Welther v. Plageman, 2021-Ohio-713 | 10th Appellate District | 2/11/21 In plaintiff's negligence action alleging that defendant-driver struck him while he was in cross-walk, trial court's judgment on the pleadings, Civ.R. 12(C), for defendant on reasoning that the action was barred by the statute of limitations is affirmed, R.C. 2305.10(A), where plaintiff's argument that he was not notified about defendant's motion is unsupported by the record which reflects that plaintiff rarely read his email and certificate of service attached to defendant's motion indicates plaintiff was served with a copy of the motion by ordinary U.S. mail.

**Appeal.** Jaballas v. Hastings Mut. Ins. Co., 2021-Ohio-737 | 2nd Appellate District | 2/12/21 In insureds' action claiming coverage for auto accident, resulting in summary judgment for insurer, appeal is dismissed for lack of a final appealable order since claim involving umbrella insurance policy was unresolved, and court's inclusion of Civ.R. 54(B) certification in summary judgment decision does not affect the status of the appeal since the record does not contain adequate information to indicate whether the pending claim is intertwined or overlaps with the claim that is being appealed.

**Jurisdiction.** Cummins & Brown, L.L.C. v. Cummins, 2021-Ohio-428 | 1st Appellate District | 2/17/21 In law firm dissolution dispute resolved by a settlement agreement and dismissal of the action, trial court erred in denying plaintiff's subsequent motion to assess deposition expenses as court costs, as set forth under the settlement agreement, since the court lacked jurisdiction where the dismissal entry did not expressly state that the trial court retained jurisdiction to enforce the settlement agreement, nor did it include the terms of the agreement.

**Objections.** Little v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1142 | Ohio Court of Claims | 2/17/21 In plaintiff's action claiming that defendant-state department's employees used excessive force against him, magistrate's recommendation for judgment in favor of defendant is adopted by the court since plaintiff did not serve his objections on defendant within the time limit for filing objections to a magistrate's decision and the objections are not properly before the court for consideration, Civ.R. 53(D)(3)(b)(i); also, plaintiff's objections and motion do not contain a certificate of service, as required by Civ.R. 5(B)(4).

**Appeal.** Miller v. Johnson, 2021-Ohio-441 | 8th Appellate District | 2/18/21 In a forcible entry and detainer action in which trial court ruled in favor of plaintiff, appeal is dismissed for lack of jurisdiction since the appeal is moot because defendant relinquished possession of the property, and there was no final appealable order where the court did not rule on defendant's counterclaim, that exceeded municipal court's jurisdiction, or certify the counterclaim to the court of common pleas.

**Pro se errors.** Nationstar Mtge., L.L.C. v. Jessie, 2021-Ohio-439 | 8th Appellate District | 2/18/21 In plaintiff-mortgage servicer's action against mortgagors for default in payment of note and mortgage, trial court did not err in granting summary judgment to plaintiff since pro se mortgagors made procedural errors where they failed to raise the issue of standing in objections to magistrate's decision, and even if the court had construed their surreply brief as a request for a continuance to conduct discovery under Civ.R. 56(F), they failed to file an affidavit as the rule requires.

**Counterclaims.** Berryhill v. Khouri, 2021-Ohio-504 | 8th Appellate District | 2/25/21 In plaintiff's action alleging defendants' misconduct in business relationship stemming from claimed unwritten partnership agreement, judgment on the pleadings in favor of defendants was not error since, in a prior action in which instant plaintiff was named a counterclaim defendant, current claims should have been brought as compulsory counterclaims and are now barred by doctrine of res judicata, and dismissal under Civ.R. 12(C) is proper because it does not rely on documents outside the pleadings.

**Attorney disqualification.** Hoag v. Ent. Holdings, 2021-Ohio-506 | 8th Appellate District | 2/25/21 In action by plaintiff-victim of traffic accident, caused by driver of rented car against defendant-car rental company, claiming that settlement agreement entered into by his attorney with defendant was breached by defendant, trial court erred in granting defendant's motion to disqualify plaintiff's attorney where plaintiff's claim relied on his attorney's potential testimony, defendant's delay in seeking disqualification resulted in substantial prejudice to plaintiff, Prof.Cond.R. 3.7, and defendant had sufficient notice that attorney would be a witness.

**Judge disqualification.** In re Disqualification of Haddad, 2021-Ohio-1209 | Supreme Court of Ohio | 2/25/21 Affiant-defense attorney's affidavit of disqualification of judge is denied since the fact that judge's judicial assistant's two adult children were employed by plaintiff in underlying action is insufficient to disqualify judge where affiant has not established that judge has undue favoritism toward plaintiff or expressed a fixed anticipatory judgment on any issue in the underlying case, nor has affiant set forth a compelling argument for disqualifying the judge to avoid an appearance of bias, R.C. 2701.03.

**Costs of receiver.** H&R Properties, L.L.C. v. Fontain, 2021-Ohio-516 | 1st Appellate District | 2/26/21 In a dispute among groups of condominium owners resulting in appointment of a receiver and a later settlement, trial court erred in assigning costs of receivership to defendants who were previously dismissed from action since dismissed parties no longer had standing to contest proceedings generating costs, the court lacked personal jurisdiction over the dismissed parties, the settlement

## Procedure (continued)

agreement did not expressly give the court jurisdiction to enforce the agreement, and the court made no finding of contempt to allow imposition of fees as a collateral issue.

**Judge disqualification.** In re Disqualification of Fregiato, 2021-Ohio-1265 | Supreme Court of Ohio | 3/3/21 In divorce case, affidavit of disqualification filed by attorney for defendant is denied where, inter alia, claim of bias based on judge's rulings is without merit since an affidavit of disqualification is not a vehicle to contest matters of substantive or procedural law, and judge's alleged negative comments were made two years earlier, so affidavit was not filed timely, R.C. 2701.03.

**Visiting judge.** McCall v. Great Lakes Constr. Co., 2021-Ohio-582 | 8th Appellate District | 3/4/21 In employee's action against employer seeking workers' compensation benefits after suffering workplace injury, trial court did not err in reassigning the case to a visiting judge due to a conflict on the original docket and judgment is affirmed where employee failed to object to the reassignment and thus waived issue for appeal, and there is no evidence employee was prejudiced by the transfer, Sup.R. 4(B).

**Appeal/Relief from judgment.** Durst v. Nutter, 2021-Ohio-710 | 4th Appellate District | 3/4/21 In plaintiff's action for, inter alia, fraud against defendant, plaintiff's appeal of denial of Civ.R. 60(B) motion is dismissed pursuant to doctrine of res judicata where settlement entry was a final appealable order, plaintiff could have raised the same Civ.R. 60(B) arguments in a direct appeal, and even if not barred by res judicata, appeal would fail on its merits because settlement entry stated that parties disagreed as to effect of dismissal of plaintiff's claims and the court rendered no opinion on the issue.

**Appeal.** Hamilton v. Barth, 2021-Ohio-601 | 1st Appellate District | 3/5/21 In plaintiff's action for, inter alia, breach of contract against defendants-property owners who sold two parcels of land to plaintiff, appeal is dismissed for lack of a final, appealable order where, although summary judgment was granted in favor of defendants on all plaintiff's claims on reasoning that the contract was never notarized pursuant to R.C. 5301.01(A), the judgment entry failed to address the outstanding counterclaim against plaintiff

and did not include language of no just reason for delay required by Civ.R. 54(B) and R.C. 2505.02.

**Dismissal.** U.S. Bank, N.A. v. Muma, 2021-Ohio-629 | 12th Appellate District | 3/8/21 In third-party plaintiffs' claim against third-party defendants who represented plaintiffs in purchase of property that was the subject of foreclosure, resulting in dismissal of claim under Civ.R. 41(B)(1), the trial court did not err in denying plaintiffs' motion for relief from judgment, Civ.R. 60(B)(5), since plaintiffs failed to take immediate action to perfect service, as explicitly instructed by the court, and they failed to appear for a status hearing.

**Judicial notice.** Wick v. Lorain Manor, Inc., 2021-Ohio-635 | 9th Appellate District | 3/8/21 In plaintiff-executor's wrongful death action in which defendants asserted that the action was not filed within the statute of limitations, trial court erred in granting summary judgment to defendants and in failing to take judicial notice that clerk of courts' office was closed on certain dates that were critical to establishing the timeliness of plaintiff's claim; the trial court could accurately and readily determine the date information by consulting reliable sources, Evid.R. 201(C) and 201(D).

**Judge disqualification.** In re Disqualification of Hickson, 2021-Ohio-1242 | Supreme Court of Ohio | 3/9/21 Affidavit of disqualification of judge is denied where judge appears to have an open mind about father in underlying custody action and is committed to scheduling a hearing to determine best placement for minor, agency's counsel failed to show that judge's decision to conduct emergency in-person hearings during the pandemic endangered health of participants to the extent that judge must be disqualified from future proceedings, and although judge failed to send emails to all counsel or unrepresented parties, the emails do not prove bias, R.C. 2701.03.

**Jurisdiction.** Cleveland Police Patrolmen's Assn. v. Cleveland, 2021-Ohio-702 | 8th Appellate District | 3/11/21 In police association's action claiming that city terminated a member without just cause in violation of the parties' CBA, resulting in arbitration award for city, trial court did not err in dismissing, for lack of jurisdiction, association's application to vacate arbitration award since

association failed to serve its application on city's outside counsel, in violation of R.C. 2711.13, service on city did not satisfy requirements for service because city was represented by outside counsel, and service on city's law department was insufficient because department did not represent city in the matter.

**Limitations.** Wolff v. Dunning Motor Sales, 2021-Ohio-740 | 5th Appellate District | 3/11/21 In plaintiff's action against defendant-car dealership alleging that defendant's mechanic damaged his vehicle while examining it for a repair quote, it was not error to grant defendant's motion to dismiss since the complaint clearly specifies the date of the injury, plaintiff was aware of the alleged damage on that date and his delay in discovering the cause and extent of damage does not excuse the untimeliness of his complaint, complaint was filed beyond the limitations period for damage to personal property, and all other issues are rendered moot, Civ.R. 12(B)(6).

**Judge disqualification.** In re Disqualification of Bickerton, 2021-Ohio-1266 | Supreme Court of Ohio | 3/11/21 In medical malpractice case, defendant-physician's attorney's affidavit of disqualification arguing that judge could endanger the health and safety of defendant, who is elderly, by ordering him to travel from Florida to appear in court in person is denied since defendant expressed an unwillingness to appear remotely, the judge would have granted any subsequent request for defendant to appear remotely, but no such request was filed, and judge has implemented and enforces a COVID-19 jury-trial protocol and has consulted with county health department, R.C. 2701.03.

**Jurisdiction.** Progressive Macedonia, L.L.C. v. Shepherd, 2021-Ohio-792 | 11th Appellate District | 3/15/21 In guardianship dispute, judgment of the trial court adopting the magistrate's decision ordering petitioner to pay guardian ad litem fees incurred in investigation of petitioner's motion to remove guardian is affirmed since petitioner failed to object to magistrate's decision and thus waived right to appeal and petitioner has not made a plain error argument on appeal; also, the court had both subject matter and personal jurisdiction to consider petitioner's allegations and any alleged errors involved the court's exercise of jurisdiction, making its judgment only voidable, but not void, R.C. 2101.24.

**Jurisdiction.** Navidea Biopharmaceuticals, Inc. v. Capital Royalty Partners II, L.P., 2021-Ohio-808 | 10th Appellate District | 3/16/21 In pharmaceutical company's breach of contract and related claims action against lender alleging that lender collected excessive damages resulting from lender's claim that pharmaceutical company defaulted on loan, trial court erred in exercising jurisdiction where the parties' settlement agreement specifically provided for another state's exclusive jurisdiction relating to affirmative defenses and amount of money owed, and that state's judgment as to calculation of damages must be given full faith and credit.

**Amended complaint.** Sidwell v. Allstate Fire & Cas. Ins. Co., 2021-Ohio-853 | 8th Appellate District | 3/18/21 In traffic accident negligence action in which plaintiffs named driver's husband instead of driver as defendant, it was error to deny plaintiffs' Civ.R. 15(C) motion to amend complaint to substitute incorrectly named defendant where, inter alia, plaintiffs were not attempting to add an additional party, the proposed amended complaint did not contain any new allegations, and the driver was aware of the litigation by accepting service of the complaint and contacting insurer after reading the complaint or discussing the issue with her husband.

**Evidence.** Hinerman v. Grill on Twenty First, L.L.C., 2021-Ohio-859 | 5th Appellate District | 3/18/21 In plaintiff's action against defendant-business partner alleging violation of operating agreements and misappropriation of funds, trial court did not err in prohibiting defendant from testifying regarding loans made and payments received in business operations where exclusion of testimony was a result of motion in limine to exclude evidence not substantiated by source documents and disclosed to plaintiff prior to trial, and even if testimony was improperly excluded, defendant's proffered testimony showed that exclusion did not affect his substantial rights.

**Protection order objections.** Cobia v. Mays, 2021-Ohio-863 | 2nd Appellate District | 3/19/21 Denial of petition for a civil protection order is affirmed since petitioner failed to file timely objections to the trial court's order prior to filing appeal, Civ.R. 65.1(G); the failure to file objections is not jurisdictional, but a party may not challenge a protection order on appeal if objections were not filed.

**Protection order objections.** Elijah v. Mays, 2021-Ohio-866 | 8th Appellate District | 3/19/21 Denial of petition for a civil protection order is affirmed since petitioner failed to file timely objections to trial court's order prior to filing appeal, Civ.R. 65.1(G); failure to file objections is not jurisdictional, but a party may not challenge a protection order on appeal if objections were not filed.

**Service.** Professional Fin. Servs. of Ohio, L.L.C. v. Peck, 2021-Ohio-900 | 11th Appellate District | 3/22/21 In breach of contract action in which plaintiff obtained a default judgment against defendant, it was not error to vacate the judgment on reasoning that defendant had not been served where certified mail to defendant's purported address was returned as unclaimed and unable to forward and complaint was then sent to same address by ordinary mail, while defendant testified that he was unaware of the action until he received a garnishment notice, he described where he lived at the time the action was filed, and he confirmed that he was never served with a copy of the complaint.

**Appeal.** Miller v. UBS Fin. Serv., Inc., 2021-Ohio-891 | 12th Appellate District | 3/22/21 In customer's negligence and related claims action against financial services company, appeal of trial court's order denying company's motion to stay pending arbitration and granting plaintiff's R.C. 2711.03 motion for a hearing to determine if an arbitration agreement existed and if it was enforceable is dismissed for lack of a final appealable order since the judgment entry does not determine the action or prevent further judgment, it leaves issues unresolved, and it contemplates further action, R.C. 2505.02(B)(1).

**Summary judgment.** Johnson v. Stone, 2021-Ohio-894 | 3rd Appellate District | 3/22/21 In plaintiff's action seeking creditor's bill to satisfy previously obtained judgment, summary judgment in favor of plaintiff issued before expiration of defendants' time to file a reply in support of their cross-motion for summary judgment, Civ.R. 6, was not error since defendants failed to demonstrate how timing of the court's ruling prejudiced their case or that their reply would have added anything new for the court to consider.

**Appeal.** Bruggeman v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-926 | 10th Appellate District | 3/23/21 In action by plaintiff, who has paralysis of his right leg, alleging negligence and violation of the ADA after his backpack was stolen while he was transported to hospital, appeal of trial court's dismissal of ADA claim is dismissed for lack of a final appealable order since the negligence claim was transferred to the administrative docket and remained pending, R.C. 2505.02, and there was no Civ.R. 54(B) language.

**Appeal.** Organ Cole, L.L.P. v. Andrew, 2021-Ohio-924 | 10th Appellate District | 3/23/21 In law firm's action to collect attorney fees for its work collecting a judgment previously awarded client, client's appeal of order granting firm's motion to compel disclosure of client's financial documents is dismissed for lack of a final appealable order since trial court's order met the Dispatch Printing Co. standard for protecting trade secrets of a business, it was not a provisional remedy that qualifies as a final appealable order under R.C. 2505.02, and the reviewing court lacks jurisdiction to review the substance of the trial court's order beyond the "adequate safeguards" it created.

**Procedendo.** State ex rel. Brust v. French, 2021-Ohio-927 | 10th Appellate District | 3/23/21 Petition for writ of procedendo to compel judge to proceed to final judgment in a civil case that relator filed to recover bailed property is dismissed as being moot; reviewing court is permitted to consider the record of the trial court and judicial decisions provided by the respondent in determining whether a complaint for a writ of procedendo is moot.

**Class certification.** Madyda v. Ohio Dept. of Pub. Safety, 2021-Ohio-956 | 10th Appellate District | 3/25/21 Certifying a class as persons who, during a one-year period, paid a fee to department of public safety for a service it no longer performed when issuing driver licenses and ID cards was not error since the method of payment used to pay the fee is not the determinative factor as to whether all class members were injured in fact, the department maintains records identifying class members, making the class action manageable, and the class meets each of the requirements of Civ.R. 23(A) and (B)(3).

## Procedure (continued)

**Dismissal.** Williams v. Montgomery Cty. Treasurer, 2021-Ohio-976 | 2nd Appellate District | 3/26/21 In plaintiff's claim identifying himself as a private attorney general and presenting to defendant-county treasurer a handwritten bill of exchange payable in cash, trial court did not err in granting defendant's motion to dismiss since a bill of exchange is not a valid legal document or tender, in making filings on behalf of trust, plaintiff was engaging in the unauthorized practice of law, R.C. 4505.07, so his notice of appeal is a legal nullity, and even if appeal were not a nullity, the claim was properly dismissed because 12 U.S.C. Sec. 95a, which was the basis for his redemptionist theory claim, is no longer valid.

**Relief from judgment.** Worthington v. Admr., Bur. of Workers' Comp., 2021-Ohio-978 | 2nd Appellate District | 3/26/21 In claimant's appeal of administrative denial of workers' compensation benefits for injuries sustained at work, resulting in involuntary dismissal because of claimant's failure to comply with discovery requests, it was error to grant claimant's motion for relief from judgment since plaintiff failed to appeal the involuntary dismissal in addition to filing a motion for relief from judgment, the case was dismissed with prejudice, therefore judgment was on the merits and res judicata applies, and even though the motion for relief from judgment was granted before time for filing of notice of appeal expired, Civ.R. 60(B) is not a substitute for appeal.

**Civil damages/Crime.** Evans v. Ohio Atty. Gen., 2021-Ohio-1146 | 4th Appellate District | 3/26/21 In plaintiff's R.C. 2307.60 common pleas court action including a claim for declaratory judgment that governor committed a crime, prompted by public records and published statements referring to plaintiff, trial court's dismissal is affirmed since, inter alia, plaintiff made no factual allegations that defendants falsified any record related to plaintiff to defraud or facilitate fraud, to use plaintiff's identifying information with intent to hold themselves out to be him, to represent his personal identifying information as their own, or to help someone else take his identity; also, the court of claims has exclusive jurisdiction over claims for monetary damages.

**Dismissal.** Pugh v. Capital One Bank USA N.A., 2021-Ohio-994 | 9th Appellate District | 3/29/21 In plaintiff's complaint in equity against defendants-creditors for judicial composition agreement seeking to adjust debts, trial court did not err in dismissing action for failure to state a claim where plaintiff's alleged equitable right is not recognized in law and therefore is not applicable to confer equitable jurisdiction upon the court, the claim contradicts the courts' equity powers in relation to contracts, it violates common law right of debtors and creditors to enter into composition agreements, and equity does not permit courts to make provisions of a contract, Civ.R. 12(B)(6).

**Judgment/Appeal.** Homestead Interiors, Inc. v. Hines, 2021-Ohio-1014 | 11th Appellate District | 3/29/21 In plaintiff-carpet store's action to collect amount allegedly owed by defendant for carpet installation, trial court erred in awarding attorney fees to plaintiff before ruling on defendant's objections to magistrate's decision and before entitlement to attorney fees had been finally established by the court; regarding possible lack of a final appealable order resulting from court's failure to rule on objections, the appeal involves trial court's independent judgment as to attorney fees, and if appeal was dismissed for lack of a final appealable order, objections to the underlying decision may never be properly ruled on and final judgment may never be entered.

**Appeal/Arbitration.** Raney v. Weather Safe Exteriors, Inc., 2021-Ohio-999 | 12th Appellate District | 3/29/21 In breach of contract and related claims action arising from dispute about quality of work performed by defendant-contractor, appeal of denial of defendant's motion to dismiss claiming that complaint was subject to arbitration is dismissed for lack of a final appealable order where defendant did not otherwise move for a stay of proceedings pursuant to R.C. 2711.02 or to compel arbitration pursuant to R.C. 2711.03.

**Findings of fact.** Dyer v. Gomez, 2021-Ohio-1168 | 7th Appellate District | 3/31/21 Appeal of denial of father's motion for modification of parental rights and responsibilities is dismissed for lack of jurisdiction since a jury was not involved, the court denied father's timely filed a Civ.R. 52 motion for findings of

fact and conclusions of law and the time period for filing a notice of appeal did not commence; trial court is instructed to submit its findings of fact and conclusions of law.

**Procedendo.** State ex rel. Hillman v. Woods, 2021-Ohio-1080 | 10th Appellate District | 3/31/21 Petition for a writ of procedendo to compel judge to issue a ruling on relator's motions for relief from judgment and to proceed to judgment is dismissed based on recommendation of magistrate, who issued a decision, including findings of fact and conclusions of law.

**Relief from judgment.** White Stag Aircraft Leasing U.S. v. JP Morgan Chase Bank, N.A., 2021-Ohio-1245 | 7th Appellate District | 3/31/21 In airplane leasing company's action against bank for failure to pay amount secured by letter of credit when lessee of plane defaulted on lease, resulting in default judgment against bank, it was not error to grant bank's motion for relief from judgment where company's law of the case doctrine argument is meritless since bank's first motion that was denied was actually a motion to reconsider interlocutory default judgment rather than a Civ.R. 60(B) motion as there was no final appealable order, and bank demonstrated excusable neglect because employee made an internal corporate error.

**Appeal.** Viers v. Kubach, 2021-Ohio-1135 | 11th Appellate District | 4/5/21 In probate court action in which plaintiff filed a complaint alleging several claims for relief, including a claim for attorney fees and costs, and court ruled on all counts except the claim for attorney fees, appeal is dismissed for lack of a final appealable order where the claim for attorney fees was made in the original pleadings, R.C. 2505.02(B).

**Procedendo.** State ex rel. Bechtel v. Cornachio, 2021-Ohio-1121 | Supreme Court of Ohio | 4/6/21 Petition for writ of procedendo to compel judge to enter a final judgment regarding a magistrate's probable-cause finding in an animal-seizure case is denied since the judge already made a ruling, rendering the petition moot; claim that the judgment entry does not contain the necessary elements to be a final appealable order is without merit since there is no authority for the proposition that procedendo is the proper vehicle to test the finality of a judgment entry.

**Settlement agreement/Attorney fees.** Calypso Asset Mgt., L.L.C. v. 180 Indus., L.L.C., 2021-Ohio-1171 | 10th Appellate District | 4/6/21 In plaintiff-asset management company's fraudulent inducement action against defendant in failed sale-leaseback deal where defendant sought attorney fees under settlement agreement's fee-shifting provision, trial court erred on remand in its lodestar calculation of attorney fees since some of the billed entries were improperly excluded as block-billed entries when they consisted of one task, some hours expended on first appeal were reasonable and should not have been excluded, and Prof.Cond.R. 1.5 reductions constituted impermissible double-counting.

**Res judicata/Law of case.** AJZ's Hauling, L.L.C. v. TruNorth Warranty Program of N. Am., 2021-Ohio-1190 | 8th Appellate District | 4/8/21 In plaintiff-hauling company's two breach of contract actions against defendant-warranty company for warranty repair work on truck, trial court did not err in second case in denying defendant's motion to stay proceedings and compel arbitration, even though in the first case the court did grant defendant's motion to stay, since law of the case doctrine does not preclude court's new ruling contrary to ruling in first case where court made no findings of fact, refer to the evidence or set forth its reasoning, and judgment in first case was not reviewed by the court of appeals; rigid application of doctrine of res judicata to prohibit a court from issuing a ruling contrary to a prior ruling would be unreasonable and unjust, R.C. 2711.02.

**Discovery.** Schmidt Machine Co. v. Swetland, 2021-Ohio-1236 | 3rd Appellate District | 4/12/21 In plaintiff-machine company's breach of contract action against defendant for failure to pay for repairs to agricultural equipment, summary judgment in favor of plaintiff was not error where defendant failed to timely respond to plaintiff's requests for admissions, the requested admissions had already been deemed admitted by the time defendant filed for an extension, and admissions conclusively established claims included in plaintiff's motion for summary judgment.

**Transfer of case.** State ex rel. State Farm Mut. Ins. Co. v. O'Donnell, 2021-Ohio-1205 | Supreme Court of Ohio | 4/13/21 Peremptory writs of prohibition and mandamus are issued prohibiting common pleas court judge

from exercising jurisdiction over instant case and ordering him to return case to municipal court since municipal court lacked a valid basis for transferring the case and common pleas court had no basis on which to assume jurisdiction where municipal court granted plaintiff's motion to transfer case on the basis of plaintiff's assertion that her claim exceeded municipal court's \$15,000 jurisdictional limit.

**Trial/Record.** Norton v. Dominion Energy Servs., Inc., 2021-Ohio-1278 | 9th Appellate District | 4/14/21 In small claims court action by plaintiff-homeowner to recover cost of damage to her house where trial court's audio-recording system failed and did not record the trial, judgment for defendant is affirmed since the court considered plaintiff's affidavit in lieu of a transcript, Civ.R. 53(D)(3)(b)(iii), and issued an order settling and approving a statement of the evidence for purposes of plaintiff's appeal, App.R. 9(C), and even if an error occurred, plaintiff did not show that the error affected her substantial rights.

**Service.** Eyre v. Eyre, 2021-Ohio-1308 | 5th Appellate District | 4/14/21 In divorce action, trial court did not err in dismissing husband's motions since he did not serve motions on wife's attorney, in compliance with Civ.R. 5(B), which requires service and filing of pleadings and other papers subsequent to the original complaint on opposing party's attorney.

**Appeal.** Williams v. Ohio Dept. of Medicaid, 2021-Ohio-1338 | 2nd Appellate District | 4/16/21 Appeal of dismissal of plaintiff's claim that state department should have accepted a self-created bill of exchange on behalf of trust to pay off a lien that state department had placed on real property is dismissed as a nullity since appellant is not a licensed attorney and he may not represent the interests of the trust by filing documents in court, including a notice of appeal.

**Prohibition.** State ex rel. L.N.B. v. Lawson, 2021-Ohio-1365 | 11th Appellate District | 4/19/21 In a case in which judge issued a judgment entry granting father's motions for custody and designating him residential parent and legal custodian and mother appealed followed by the court's issuance of a nunc pro tunc order conditioning mother's parenting on completing an intensive outpatient program, mother's verified petition for a writ of prohibition is dismissed since a trial court is not divested of all

jurisdiction after an appeal is filed; the trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction and to act in aid of the appeal.

**Transcript.** R.S v. S.S., 2021-Ohio-1384 | 10th Appellate District | 4/20/21 Issuance of a civil protection order against appellant-respondent is affirmed since appellant did not provide a transcript of the proceedings, there is no basis on which the reviewing court can make any finding with respect to the evidence, and the regularity of the proceedings below is presumed.

**Prohibition.** Smith v. Akron Mun. Court, 2021-Ohio-1388 | 9th Appellate District | 4/20/21 In a forcible entry and detainer action, petition for writ of prohibition seeking to set aside magistrate's ruling to evict petitioner and to order municipal court to stay the eviction is dismissed since petitioner did not name the judge who entered the eviction order, a court cannot sue or be sued in its own right, absent express statutory authority, the petition failed to establish a patent and unambiguous lack of jurisdiction, and petitioner has an adequate remedy at law by way of appeal to challenge the errors alleged in the petition.

**Dismissal.** Dye v. J.J. Detweiler Ents., Inc., 2021-Ohio-1393 | 5th Appellate District | 4/21/21 In plaintiffs' action alleging, inter alia, breach of contract for dispute with defendant-landlord over past due rent for warehouse storage, trial court erred in dismissing the complaint with prejudice on reasoning that plaintiffs failed to comply with the court's order to retain co-counsel in the event that their attorney was called as a witness for defendant, and even though plaintiffs failed to retain co-counsel, the court's order was based on hypotheticals and the dismissal with prejudice precludes the possibility that the parties could settle prior to trial, Civ.R. 41(B)(1).

**Damages.** 5500 S. Marginal Way, L.L.C. v. Parker, 2021-Ohio-1410 | 8th Appellate District | 4/22/21 In plaintiffs-commercial building operators' action for fraud, unjust enrichment and breach of contract, arising from defendants-tenants' failure to repay loan or to make rental payments, trial court erred in awarding zero damages after granting default judgment where, although plaintiffs failed to present sufficient evidence of damages to show liability

## Procedure (continued)

on breach of contract claims, the claims for fraud and unjust enrichment did not require any form of writing, and the case is remanded to the trial court for consideration of damages related to the fraud and unjust enrichment claims, Civ.R. 55(A).

**Contempt/Injunction.** Grand Voiture D'Ohio La Societe Des 40 Hommes Et 8 Chevaux v. Montgomery Cty. Voiture No. 34 La Societe Des 40 Hommes Et 8 Chevaux, 2021-Ohio-1430 | 2nd Appellate District | 4/23/21 In plaintiff-national organization's motion for contempt against individual defendant-former member of its state-level organization for violating injunction issued to bar defendant from participating in the affairs of state organization and from selling or transferring real property of the state organization, it was not error to find defendant in contempt since defendant continued to act as an officer and board member of state organization, and he prepared and recorded a deed transferring title of real property to a new name of the organization, despite knowing that the organization had been enjoined from transferring or alienating any property.

**Default judgment.** Lillibridge v. Pica, 2021-Ohio-1480 | 5th Appellate District | 4/28/21 In plaintiff's replevin action seeking recovery of vehicle he allegedly purchased from third party and that he claimed was being held by defendant, trial court's judgment vacating default judgment previously entered in favor of plaintiff is affirmed since defendant's request for a hearing in response to plaintiff's motion for possession constituted an appearance for purposes of Civ.R. 55(A), and trial court did not afford defendant the required seven days' notice before issuing a default judgment.

**Frivolous conduct.** Middle West Spirits, L.L.C. v. Gemini Vodka, Ltd., 2021-Ohio-1503 | 10th Appellate District | 4/28/21 In plaintiff's breach of contract and related claims action arising from business dispute between the parties, prompting defendants to file compulsory counterclaims, ultimately resulting in the parties dismissing their complaints, trial court did not err in denying defendants' motion for attorney fees and costs that alleged frivolous conduct on the part of plaintiff and his attorneys under R.C. 2323.51 and Civ.R. 11 since none of the

allegations in defendants' itemized list of allegedly frivolous conduct rose to the level of sanctionable conduct and there was no evidence to support the claim that plaintiff's action had no basis in law or fact.

**Default judgment.** Hamrick v. Maloof, 2021-Ohio-1535 | 9th Appellate District | 5/3/21 In plaintiff's defamation action against defendant-former employer for accusing plaintiff of theft of parts from business, trial court did not err in granting plaintiff's motion for default judgment on issue of liability since defendant failed to challenge magistrate's finding that he was served with notice of default proceedings, he failed to provide a complete transcript of the hearing, and defendant received requested information prior to the trial and did not object to a one-day continuance, negating his claim that he was forced to proceed without discovery responses.

**Prohibition/Jurisdiction.** Lundeen v. Turner, 2021-Ohio-1533 | Supreme Court of Ohio | 5/5/21 In foreclosure action in which borrower claimed that trial court lacked personal jurisdiction for insufficiency of service, prompting her to file petition for writ of prohibition to prevent judge from proceeding, court of appeals' dismissal of petition is affirmed since borrower had an adequate remedy at law for failure of service either by raising the issue in the foreclosure case and on appeal or by filing a post-judgment motion to vacate a void judgment; borrower voluntarily submitted to the jurisdiction of trial court in the foreclosure action by filing a Civ.R. 12(B) motion to dismiss without asserting insufficiency of service or lack of personal jurisdiction as a defense.

**Relief from judgment.** Gibbs v. Burley Trucking, L.L.C., 2021-Ohio-1595 | 10th Appellate District | 5/6/21 In plaintiff's negligent hiring and retention action, trial court did not err in denying defendants' motion for relief from judgment since defendants failed to appeal either prior default judgment or prior denial of motion for relief from judgment and therefore forfeited their challenge, and even if they did not forfeit right to challenge, plaintiff sufficiently showed that defendants knew of employee's incompetence and the act of hiring and retaining him proximately caused plaintiff's injuries.

**Res judicata.** Newman v. Univ. of Dayton, 2021-Ohio-1609 | 2nd Appellate District | 5/7/21 In plaintiff-adjunct professor's action against university and related defendants for terminating his employment after he filed a complaint for discrimination against law student, summary judgment and/or judgment on the pleadings in favor of defendants was not error since claim preclusion under doctrine of res judicata applied where there was a prior valid judgment on the merits, all claims were based on same series of events as prior litigation, and although not all defendants were named in the prior action, they shared a common interest in the outcome of the prior case.

**Service.** Fifth Third Bank v. Ricci, 2021-Ohio-1648 | 1st Appellate District | 5/12/21 Denial of defendant's motion to vacate default judgment, without a hearing, was error since trial court could not have appropriately assessed defendant's credibility or the persuasiveness of his evidence and could not have determined whether he was truthful in alleging that he did not receive proper service of process; defendant asserted that he had not been personally served by the process server at the time or location indicated on the return of service, that he was not present at the location at that time, and that it would have been impossible for him to have been present at that location at that time.

**Electronic filing.** Covarrubias v. Lowe's Home Improvement, L.L.C., 2021-Ohio-1658 | 8th Appellate District | 5/13/21 In personal injury action, the trial court erred in granting judgment on the pleadings to defendant on reasoning that the statute of limitations had expired where the electronically-filed complaint was improperly time-stamped since plaintiff's counsel had uploaded the complaint, paid the filing fee and hit "submit" well within the electronic filing deadline, and it was reasonable for him to assume that the filing was in the queue to be processed; the trial court retained subject matter jurisdiction and was not required to extend the statute of limitations.

## Professional Responsibility

**Suspension.** Disciplinary Counsel v. Petracci, 2021-Ohio-249 | Supreme Court of Ohio | 2/3/21 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

**Suspension.** Disciplinary Counsel v. Quicsai, 2021-Ohio-299 | Supreme Court of Ohio | 2/4/21 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

**Suspension.** Cleveland Metro. Bar Assn. v. Fleming, 2021-Ohio-298 | Supreme Court of Ohio | 2/4/21 Attorney is issued an interim default suspension from the practice of law, with reinstatement on conditions.

**Unauthorized practice of law.** Disciplinary Counsel v. Schwab, 2021-Ohio-283 | Supreme Court of Ohio | 2/4/21 Respondent is enjoined from engaging in further acts constituting the unauthorized practice of law and is ordered to pay a civil penalty.

**Suspension.** Disciplinary Counsel v. Mearan, 2021-Ohio-321 | Supreme Court of Ohio | 2/5/21 Attorney is issued an interim remedial suspension from the practice of law, with reinstatement on conditions.

**Reinstatement.** Disciplinary Counsel v. Wargo, 2021-Ohio-368 | Supreme Court of Ohio | 2/10/21 Attorney is reinstated to the practice of law.

**Reinstatement.** Toledo Bar Assn. v. Bishop, 2021-Ohio-365 | Supreme Court of Ohio | 2/10/21 Attorney is reinstated to the practice of law.

**Resignation.** In re Resignation of Bare, 2021-Ohio-487 | Supreme Court of Ohio | 2/23/21 Attorney resigned from the practice of law with disciplinary action pending.

**Reinstatement.** Lorain Cty. Bar Assn. v. Hadeed, 2021-Ohio-514 | Supreme Court of Ohio | 2/26/21 Attorney is reinstated to the practice of law.

**Suspension.** Columbus Bar Assn. v. Worthington, 2021-Ohio-668 | Supreme Court of Ohio | 3/9/21 Attorney is indefinitely suspended from the practice of law, with reinstatement on conditions.

**Unauthorized practice of law.** Cleveland Metro. Bar Assn. v. Hennessey, 2021-Ohio-667 | Supreme Court of Ohio | 3/10/21 Respondent engaged in the unauthorized practice of law by representing victim of traffic accident regarding his legal claims and negotiating the settlement of monetary demands on his behalf, and respondent is enjoined from engaging in further acts

constituting the unauthorized practice of law and is ordered to pay a civil penalty.

**Suspension.** In re Warner, 2021-Ohio-721 | Supreme Court of Ohio | 3/12/21 Attorney is suspended from the practice of law for an interim period, with reinstatement on conditions.

**Suspension.** Stark Cty. Bar Assn. v. Kelley, 2021-Ohio-770 | Supreme Court of Ohio | 3/16/21 Attorney is issued a two-year suspension from the practice of law, stayed on conditions.

**Application for admission.** In re Application of Hale, 2021-Ohio-772 | Supreme Court of Ohio | 3/16/21 Applicant's application for admission to the bar is disapproved, and applicant is barred from reapplying.

**Disbarment.** Disciplinary Counsel v. Burchinal, 2021-Ohio-774 | Supreme Court of Ohio | 3/17/21 Attorney is disbarred from the practice of law.

**Application for admission.** In re Application of Componovo, 2021-Ohio-773 | Supreme Court of Ohio | 3/17/21 Attorney's application for admission to the bar without examination is disapproved, and he is permitted to reapply for admission to the bar without examination in one year from the date of the instant order.

**Application for admission.** In re Application of Morris, 2021-Ohio-779 | Supreme Court of Ohio | 3/17/21 Applicant's pending registration application for admission to the bar is approved.

**Application for admission.** In re Application of Brumbaugh, 2021-Ohio-780 | Supreme Court of Ohio | 3/17/21 Applicant's application for admission to the bar is disapproved, but applicant may reapply for admission without examination after one year from the date of the order issued in the instant matter.

**Public reprimand.** Lorain Cty. Bar Assn. v. Vagotis, 2021-Ohio-806 | Supreme Court of Ohio | 3/18/21 Attorney is issued a public reprimand.

**Reinstatement.** Erie-Huron Cty. Bar Assn. v. Bailey, 2021-Ohio-980 | Supreme Court of Ohio | 3/29/21 Attorney is reinstated to the practice of law.

**Resignation.** In re Resignation of Lutseck, 2021-Ohio-1173 | Supreme Court of Ohio | 4/7/21 Attorney resigns from the practice of law with disciplinary action pending.

**Reinstatement.** Mahoning Cty. Bar Assn. v. Kish, 2021-Ohio-1170 | Supreme Court of Ohio | 4/7/21 Attorney is reinstated to the practice of law.

**Disbarment.** Disciplinary Counsel v. Polizzi, 2021-Ohio-1136 | Supreme Court of Ohio | 4/7/21 Attorney is disbarred from the practice of law.

**Suspension.** Disciplinary Counsel v. Armstrong, 2021-Ohio-1219 | Supreme Court of Ohio | 4/12/21 Attorney is suspended from the practice of law for a period of 90 days, with reinstatement dependent on reinstatement to the practice of law in another state in which he is suspended for 90 days and on compliance with the court's order in that state.

**Suspension.** Disciplinary Counsel v. Dougherty, 2021-Ohio-1240 | Supreme Court of Ohio | 4/14/21 Attorney is suspended from the practice of law for two years, to run concurrently with an earlier suspension, with additional conditions on reinstatement.

**Suspension.** Cleveland Metro. Bar Assn. v. Strauss, 2021-Ohio-1263 | Supreme Court of Ohio | 4/15/21 Attorney is suspended from the practice of law for one year, entirely stayed on conditions.

**Reprimand.** Lorain Cty. Bar Assn. v. Berta, 2021-Ohio-1264 | Supreme Court of Ohio | 4/15/21 Attorney is issued a public reprimand.

**Reinstatement.** Cleveland Metro. Bar Assn. v. Hurley, 2021-Ohio-1345 | Supreme Court of Ohio | 4/19/21 Attorney is reinstated to the practice of law, with a two-year period of monitored probation.

**Resignation.** In re Resignation of Wiggins, 2021-Ohio-1347 | Supreme Court of Ohio | 4/19/21 Attorney resigns from the practice of law with disciplinary action pending.

**Suspension.** Disciplinary Counsel v. Valenti, 2021-Ohio-1373 | Supreme Court of Ohio | 4/21/21 Attorney is suspended from the practice of law for six months, with the entire suspension stayed on conditions.

## Professional Responsibility (continued)

**Reinstatement.** Disciplinary Counsel v. Corley, 2021-Ohio-1437 | Supreme Court of Ohio | 4/26/21 Attorney is reinstated to the practice of law.

**Suspension.** Disciplinary Counsel v. Searl, 2021-Ohio-1531 | Supreme Court of Ohio | 5/3/21 Attorney is suspended from the practice of law for an indefinite period, with reinstatement on conditions.

## Public Records

**Objections.** Viola v. Cuyahoga Cty. Prosecutor's Office, 2021-Ohio-645 | Ohio Court of Claims | 2/2/21 In requester's action seeking to compel prosecutor's office to search email account for records responsive to public records request, special master's report and recommendation for judgment in favor of prosecutor's office is adopted by the court since requester failed to follow R.C. 2743.75(F)(2) procedure in filing objections, he failed to show that additional office records existed in the prosecutor's personal email account, and his additional filings are duplicates, irrelevant or gratuitously salacious, R.C. 149.43.

**Adoption of recommendation.** Jabr v. Disciplinary Counsel, 2021-Ohio-646 | Ohio Court of Claims | 2/16/21 In public records action under R.C. 2743.75 where neither party has filed timely written objections to special master's recommendation, court adopts special master's report and recommendation that court should find that it lacks jurisdiction over requester's claim, that court should grant respondent's motion to dismiss, and that court should assess costs to requester.

**Adoption of recommendation.** Kuebler v. Columbus Dept. of Public Safety, 2021-Ohio-647 | Ohio Court of Claims | 2/25/21 In public records action where neither party has filed timely written objections to special master's recommendation denying requester's claim for production of withheld portions of requested records and assessing costs to respondent because respondent did not disclose non-exempt headers, signature blocks, and disclaimers until after litigation had commenced, the court adopts special master's report and recommendation.

**Privilege.** Hudson v. Greater Cleveland Regional Transit Auth., 2021-Ohio-576 | 8th Appellate District | 3/4/21 In transit police officer's action seeking to compel transit authority to produce public records related to officer's underlying discrimination complaint, summary judgment in favor of the authority was not error since requested documents are subject to attorney-client privilege, the authority had a right to disclose documents to high-ranking employees including officer, the reason for disclosure has no bearing on whether communications were privileged, and privilege was not waived just because the authority used a Faragher/Elleerth defense in a previous case, R.C. 149.43.

**Statutory damages.** State ex rel. Ware v. Akron, 2021-Ohio-624 | Supreme Court of Ohio | 3/9/21 In action to obtain public records where requester sent request by certified mail, but respondent did not reply for nearly nine months and then agreed to provide records pending payment, requester is awarded statutory damages since respondent took an unreasonable length of time to produce the requested records, R.C. 149.43(C)(2); since respondent agreed to send records pending payment, writ is granted to order respondent to provide the invoices so requester may decide whether to pay for the copies.

**Subject of records.** State ex rel. Frank v. Clermont Cty. Prosecutor, 2021-Ohio-623 | Supreme Court of Ohio | 3/9/21 Petition for writ of mandamus to compel respondent-prosecutor to provide records regarding person who was a target of investigation is denied since the claim is moot where respondent provided the records to requester-attorney who was representing the individual under investigation, treating the request as an R.C. 2953.53(D)(1) application that permits the person who is the subject of records to review the records upon written application.

**Security risk.** State ex rel. McDougald v. Sehmeyer, 2021-Ohio-666 | Supreme Court of Ohio | 3/10/21 Relator-inmate's petition for writ of mandamus to compel respondent-prison official to make available for inspection a video of a use-of-force incident is denied since respondent provided evidence of relator's security classification, housing assignment and many rule infractions, the evidence is sufficient to demonstrate that allowing relator to inspect the video would be disruptive and create security risks within the prison, and respondent

does not have a clear legal duty to allow relator to inspect the video.

**Private email.** Viola v. Ohio Atty. Gen. Office, 2021-Ohio-1152 | Ohio Court of Claims | 3/11/21 In requester's public records action in which he asked respondent-attorney general to determine whether or not an assistant attorney general violated public records laws by using personal email account for official business and to search that account for responsive public records, special master's recommendation that requester did not show a violation of R.C. 149.43(B) by respondent is adopted by the court where, inter alia, requester's objection that assistant attorney general's personal email account may contain public records is insufficient to rebut special master's findings.

**Private email.** Viola v. N. Royalton, 2021-Ohio-1153 | Ohio Court of Claims | 3/11/21 In requester's action asserting that he was denied access to public records consisting of emails in city councilman's private email account in violation of R.C. 149.43(B), special master's recommendation that there was no violation is adopted by the court since, inter alia, requester's argument that because each of the emails from councilman's private account had the seal of the office he holds on city council, all such records are public records, is without merit.

**Request during mediation.** Mentch v. Cleveland, 2021-Ohio-1564 | Ohio Court of Claims | 3/11/21 In requester's action seeking to compel city to provide email documents between certain officials that referred to a specific museum, special master recommends that the court dismiss the claims in the complaint as moot since those requests were satisfied and also dismiss an overly broad request made during mediation, for lack of jurisdiction, since the new request was not encompassed within, and did not overlap, the requests listed in the original complaint, R.C. 149.43.

**Customized request.** Miller v. Ohio Dept. of Health, Vital Statistics, 2021-Ohio-996 | Ohio Court of Claims | 3/23/21 In complaint for denial of access to public records in which request is for records of causes of death coded as Covid-19 and where respondent rejected request on reasoning that it was a customized request for records



that did not contain the requested variables, special master recommends that respondent provide the requested records since respondent keeps multiple databases containing the records responsive to the request and respondent can produce the requested data output using existing software.

**Scope of request.** State ex rel. Stevenson v. King, 2021-Ohio-1093 | 8th Appellate District | 3/29/21 City council president's petition for writ of mandamus to compel city director of finance to provide all financial records held by director and his office that involved the expenditure of CARES Act funds is granted, even though the request was not limited to specific records and failed to identify the records with specificity, since director did not seek clarification or ask that the request be narrowed under R.C. 149.32(B)(2), which may have helped to resolve the dispute, and director did not argue that the request was vague or overly broad; therefore the scope of the records request is not a reason to deny the writ.

**Death records.** WCPO-TV v. Ohio Dept. of Health, 2021-Ohio-1151 | Ohio Court of Claims | 4/1/21 In requester's action seeking to compel respondent to provide records concerning the number of deaths from pandemic for residents of certain long-term care facilities, special master recommends the court to order respondent to provide records for first request for residents at a single long-term care facility, to rule that respondent was not required to provide records for second request in the absence of evidence that the dataset requested is an existing record, and to rule that respondent violated R.C. 149.43(B)(2) by failing to provide requester with the opportunity to revise request.

**Quasi-agency test.** State ex rel. Armatas v. Plain Twp. Bd. of Trustees, 2021-Ohio-1176 | Supreme Court of Ohio | 4/8/21 In public records case, denial of petition for writ of mandamus to compel respondent-board to provide invoice for legal services was error since requester proved that the requested legal invoice related to a delegated public duty, so he satisfied the quasi-agency test and therefore showed that the legal invoice constituted a public record, R.C. 149.43(A)(1) and 149.011(G); requester is also entitled to statutory damages and a determination and award of all court costs, but he is not entitled to attorney fees since he proceeded pro se.

**Exception.** Whitehead v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1600 | Ohio Court of Claims | 4/15/21 In remand of public records case to special master, it is recommended that the exception from public records in R.C. 5120.21(F) apply to requested records about former inmate, who is deceased, since the exception for records of inmates committed to the department of rehabilitation and correction applies despite the status of the individual as a former or deceased inmate at the time of the request, and the exception does not expressly prohibit their disclosure but merely provides that their disclosure is not mandated.

**Inmate's request.** State ex rel. Parker Bey v. Byrd, 2021-Ohio-1413 | 8th Appellate District | 4/16/21 In relator-inmate's public records action seeking to compel respondent-clerk of courts to produce journal entries and records-retention schedule, writ of mandamus is denied since respondent provided relator with retention schedule and available journal entry, two of the requested journal entries do not exist, as shown by affidavit of respondent's chief of staff, and relator failed to seek permission of the sentencing trial court judge prior to requesting records, as required by R.C. 149.43(B)(8).

**Request/Explanation.** State ex rel. Griffin v. Sehlmeier, 2021-Ohio-1419 | Supreme Court of Ohio | 4/27/21 Relator's petition for writ of mandamus to compel respondent-public records custodian at institution to provide public records about the number of staff and inmates who had tested positive for COVID-19 is granted on the basis of a series of requests made by relator and custodian's insufficient explanation about daily status sheet records on staff and inmate testing, custodian has a clear legal duty to identify the records that are responsive to relator's request and to offer to provide them at cost; also, relator satisfied the transmission requirement under R.C. 149.43(C)(2), and based on date of relator's complaint, he is entitled to the statutory maximum amount of damages.

**Death information.** WCPO-TV v. Ohio Dept. of Health, 2021-Ohio-1566 | Ohio Court of Claims | 4/29/21 In requester-television station's action seeking to compel respondent-department of health to provide access to public records concerning number of COVID-19 deaths in a care center, special master's report

and recommendation is adopted in favor of requester where the information sought was not protected health information because it did not identify an individual and was in summary, statistical or aggregate form, R.C. 3701.17 and R.C. 149.43.

## Real Property

**Contract forfeiture.** Garee v. Wolfe, 2021-Ohio-444 | 5th Appellate District | 2/16/21 In plaintiff's foreclosure action against defendant for failure to timely make a monthly payment pursuant to the parties' land contract, trial court erred in finding that defendant forfeited the contract since the statutory grace period provided for in R.C. 5313.05 did not expire under the contract until 30 days after the date of default, and therefore defendant's monthly payment was timely made.

**Foreclosure.** Tax Ease Ohio, L.L.C. v. Hillman, 2021-Ohio-459 | 5th Appellate District | 2/18/21 In tax certificate holder's action against property seeking foreclosure to satisfy tax lien represented by tax certificate, trial court did not err in dismissing complaint without prejudice and in granting certificate holder's motion to vacate judgment since certificate was redeemed and paid in full, vacating a decree of foreclosure is a valid way to indicate that a certificate has been redeemed, and certificate holder is precluded from re-filing a complaint as to the specific tax certificate because of the payment and redemption.

**Foreclosure.** Wells Fargo Bank, N.A. v. Collins, 2021-Ohio-508 | 8th Appellate District | 2/25/21 In bank's foreclosure action against homeowner for default on note and mortgage, trial court did not err in denying homeowner's motion for relief from judgment since homeowner's allegation of fraud was not a meritorious defense to satisfy his Civ.R. 60(B) claim, his counsel's health problems and difficulty with case management software did not constitute a mistake or excusable neglect in failing to request a further extension for the supersedeas bond requirement, and Civ.R. 60(B) may not be used as a substitute for an appeal to collaterally attack a final judgment.

**Foreclosure.** MTGLQ Investors, LP v. Stilwell, 2021-Ohio-499 | 5th Appellate District | 2/25/21 In plaintiff-investment company's foreclosure action against defendant-property owner for default on note and mortgage, trial court did

## Real Property (continued)

not err in granting summary judgment to plaintiff since defendant's contention that allonge was detached from original blank-indorsed note was rebutted by testimony that it was separated only for the purpose of photocopying, therefore entitling plaintiff to enforce note pursuant to R.C. 1303.31(A)(1), and defendant did not provide evidence to controvert balance due presented by plaintiff.

**Foreclosure.** J.P. Morgan Mtge. Acquisition Corp. v. Baker, 2021-Ohio-1024 | 5th Appellate District | 3/29/21 In bank's foreclosure action against borrowers for breach of terms of mortgage by failure to make payment, summary judgment in favor of bank is affirmed where, inter alia, trial court was not required to conduct a hearing on the motion for summary judgment, and although borrowers included an affirmative defense that HUD regulations were violated, they failed to present evidence establishing that the loan was insured by HUD, which is a prerequisite to the obligations described in the regulations.

**Foreclosure.** Wilmington Savs. Fund Soc. v. Lautzenheiser, 2021-Ohio-1046 | 5th Appellate District | 3/29/21 In a foreclosure action, summary judgment for plaintiff-assignee of mortgage is affirmed where, inter alia, defendant-borrower disputes plaintiff's evidence that defendant breached the terms of the notes and mortgage and argues that he should be permitted to conduct additional discovery, but the matter has been pending for more than five years and has been in foreclosure mediation multiple times, so there was ample time to develop the record and request discovery from the parties.

**Condominium assessment.** Bridgecreek Condominium Assn., Inc. v. Robinson, 2021-Ohio-1042 | 1st Appellate District | 3/31/21 In condominium association's lien foreclosure complaint against unit owner claiming failure to pay full assessment, trial court erred in granting summary judgment to the association where the unit owner withheld the portion of assessment that applied to trash removal and the association did not point to a provision in the declarations that would allow it to assess unit owners for trash removal, so the association failed to prove that unit owner violated the declarations in withholding a portion of her assessment.

**Evidence.** Erzurum v. Erzurum, 2021-Ohio-1162 | 7th Appellate District | 3/31/21 In parents' action alleging that deeds transferring real property from them to son were procured through undue influence and duress, judgment in favor of parents setting aside the deeds was error since trial court improperly admitted evidence of his bankruptcy cases, his reason for residing in a foreign country for several years, and the filing of a qui tam action against him, resulting in material prejudice against son because of the influence of the evidence on jurors' credibility determinations; where defendant's credibility was irreparably damaged, his substantial right to a fair trial was affected.

**Contract reformation.** Wong v. CCH Dev. Corp., 2021-Ohio-1099 | 8th Appellate District | 4/1/21 In sellers' action for reformation of deed on sale of parcels of real property to developer where contract drafted by sellers mistakenly listed 11 parcels of land rather than 10, the trial court did not err in granting developer's motion to dismiss since the error occurred as a miscommunication between sellers and their lawyer, the mistake was unilateral, the courts generally do not reform contracts when a party makes a unilateral mistake, and the exception for a drafting error that opposing party was aware of and took advantage of did not apply to the facts, Civ.R. 12(B)(6).

**Jurisdiction.** Lovejoy v. Diel, 2021-Ohio-1124 | 12th Appellate District | 4/5/21 In plaintiff's small claims action seeking compensation for cleaning house and adjacent city-owned lot after defendants moved out, trial court erred in dismissing complaint for lack of subject matter jurisdiction on reasoning that the action was for foreclosure and was equitable in nature since the parties' agreement for plaintiff to sell property to defendants does not comply with land contract requirements in R.C. 5313.01 and 5313.02, plaintiff was not required to pursue foreclosure pursuant to R.C. 5313.07, and agreement may be a valid contract over which the trial court has jurisdiction.

**Mandamus/Prohibition.** State ex rel. Nyamusevya v. Hawkins, 2021-Ohio-1122 | Supreme Court of Ohio | 4/6/21 In foreclosure action, dismissal of relator's petitions for prohibition to prevent judge from proceeding with case, arguing that the court lacked jurisdiction, and for mandamus to compel judge to rule

on certain motions is affirmed since relator's claims that trial court lacked authority to enter foreclosure judgment against him because of alleged defects in preliminary and final judicial reports, R.C. 2329.191, are of no merit since those alleged defects do not affect the subject-matter jurisdiction of the trial court, and the trial court had denied relator's motions including a motion to withdraw the property from foreclosure sale, rendering the mandamus claim moot.

**Foreclosure.** Waker v. Lawson, 2021-Ohio-1218 | 2nd Appellate District | 4/9/21 In plaintiff's foreclosure action against defendant-former paramour for failure to make mortgage payments on house purchased by plaintiff in defendant's name, summary judgment in favor of defendant on her counterclaims to quiet title and for slander of title was not error where defendant was not aware of the mortgage at time of closing, there was no promissory note to establish that defendant owed a debt, the mortgage referencing the debt was not a written contract between the parties, and the invalid mortgage constituted a cloud on the title.

**Rule against perpetuities.** Hanahan v. DPA Dev., L.L.C., 2021-Ohio-1212 | 2nd Appellate District | 4/9/21 In executor's breach of contract action against defendant-property development company that accepted decedent's payment prior to his death but failed to convey the property where the parties reached a settlement agreement containing a provision for defendant to repurchase the property, trial court erred in including in its judgment the provision allowing defendant the right of first refusal to repurchase the property since the price was limited to the price paid by decedent and there was no time limitation on defendant's right of first refusal, so the provision violated the rule against perpetuities.

**Foreclosure.** Anderson v. Clark, 2021-Ohio-1210 | 2nd Appellate District | 4/9/21 In property seller's foreclosure action against buyer alleging default on note, judgment in favor of buyer was not error where seller failed to present sufficient evidence that she had delivered notice of acceleration and she failed to demonstrate that all conditions precedent had been satisfied, seller had also agreed to forbear payments while house was fixed up and sold, and she failed to prove that buyer was in default.

**Appeal.** Real Time Resolutions, Inc. v. Vogelpohl, 2021-Ohio-1270 | 10th Appellate District | 4/9/21 In plaintiff's foreclosure action against defendants for default on note secured by mortgage, appeal of judgment in favor of plaintiff is dismissed for lack of a final appealable order where the decision did not resolve what liens must be marshaled before distribution is ordered, the priority of any liens, amounts due various claimants, determination of rights and responsibilities of parties, or whether order of sale is to be issued, and therefore filing of appeal was premature, R.C. 2505.02(B) and Civ.R. 54(B).

**Maintenance cost.** Johnson's Island Property Owners' Assn. v. Cianciola, 2021-Ohio-1341 | 6th Appellate District | 4/16/21 In plaintiffs-island property owners' association's unjust enrichment action against defendants-property owners seeking to recover defendants' share of costs for road maintenance, trial court did not err in finding that defendants had an obligation to repair all roads on the island and not just ones they used, even though operating agreement was not enforceable against them, since defendants have an easement over all of the roads on the island and they have a common law obligation to contribute to the reasonable cost of repairing and maintaining these roads.

**Fraud.** Stutler v. Giannini, 2021-Ohio-1395 | 5th Appellate District | 4/21/21 In home buyer's fraud action against seller for failure to disclose termite infestation and damage to home prior to sale, summary judgment in favor of seller was not error where buyer did not establish that seller knew of termites in the house or that termites were actively concealed prior to sale, and although seller's son had previously placed plastic boards over holes in wall, allegations that seller would have seen the damage while walking by the work being done were unsubstantiated.

## Tax

**Real property.** Gupta v. Lucas Cty. Bd. of Revision, 2021-Ohio-332 | 6th Appellate District | 2/5/21 In taxpayer's challenge to tax valuation of his property, the board of tax appeals did not err in valuing the property at the recent sale price to taxpayer since taxpayer did not establish that his purchase was under duress and not voluntary, and taxpayer's evidence of the tax valuation of comparable properties

provided by auditor was not probative since the properties varied from taxpayer's property by age, date of sale, square footage, number of bedrooms, bathrooms and floors, R.C. 5713.03.

**Res judicata.** Corex Partners, L.L.C. v. Franklin Cty. Bd. of Revision, 2020-Ohio-3865 | 10th Appellate District | 3/3/21 In taxpayer-office building owner's challenge to county auditor's valuation of property for two prior years based on continuing-complaint jurisdiction, the board of tax appeals' decision ordering the board of revision to revalue the property for those years was error because taxpayer previously made the same argument in an appeal that was dismissed, taxpayer failed to appeal the dismissal, and doctrines of res judicata and law-of-the-case preclude re-litigation of issues which were finally determined, R.C. 5715.19.

**Real property.** Viola Assocs., L.L.C. v. Lorain Cty. Bd. of Revision, 2021-Ohio-991 | 9th Appellate District | 3/29/21 In taxpayer's challenge to tax valuation of its property, board of tax appeals' (BTA) decision that greenhouses on property should be treated as personal property rather than real property is affirmed since the greenhouses were not "buildings," "structures," or "improvements" as defined by R.C. 5701.02, and even if they were so classified, they would be considered business fixtures under R.C. 5701.03(B) and would be treated as personal property under that rationale.

**Sales and use.** N.A.T. Transp., Inc. v. McClain, 2021-Ohio-1374 | Supreme Court of Ohio | 4/22/21 Use tax assessment on taxpayer-for-hire motor carrier's purchases of three trucks to collect and dispose of waste is affirmed as to residential-use truck, the ponderance of whose customers did not designate the destination of disposal of their waste, and assessment is reversed as to the other two institutional-use trucks, the preponderance of whose customers did designate the destination of disposal of their waste, since the exemption from sales and use tax under the highway transportation for hire exemption, R.C. 5739.02(B)(32), requires transportation of personal property belonging to others, and designation of the destination of the waste is determinative of whether the waste is personal property.

**Real property.** Zeller-401 FX TIC, L.L.C. v. Franklin Cty. Bd. of Revision, 2021-Ohio-1504 | 10th Appellate District | 4/29/21 Judgment affirming board of revision's valuation of property to include certain taxable improvements to taxpayers' property is affirmed, even though R.C. 3735.67(A) provides that real property owners located in a community reinvestment area (CRA) and eligible for tax exemption under a municipal resolution describing the CRA may apply for exemption from taxation, since taxpayers failed to present the resolution describing the CRA in which the property is located and the trial court was unable to review the resolution and independently assess auditor's determination that some portion of the improvements to the property were subject to taxation.

**Estimated/Self-employment.** Bodnar v. Regional Income Tax Agency, 2021-Ohio-1655 | 8th Appellate District | 5/13/21 Dismissal of taxpayer's action to declare that Regional Income Tax Agency (RITA) is statutorily precluded from estimating current-year tax liability for a taxpayer who fails to report his or her own estimate was not error since taxpayer, who did not estimate self-employment tax liability, failed to identify any specific limitation imposed by the General Assembly or express provision that prevents RITA from estimating that tax; estimate was made based on taxpayer's self-employment taxes for previous year.

## Torts

**Negligence.** Dixon v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1138 | Ohio Court of Claims | 2/1/21 In negligence action arising from injuries to plaintiff's back and leg when he fell while climbing down from an upper bunk, judgment is recommended for defendant-state department where, inter alia, plaintiff admitted that he missed the step he normally used, he failed to demonstrate that defendant violated its duty of ordinary care in assigning plaintiff to a top bunk, and he provided no expert testimony which would establish proximate cause between his fall and his alleged sciatic nerve pain.

**Legal malpractice.** Alonso v. Thomas, 2021-Ohio-341 | 9th Appellate District | 2/8/21 In malpractice action by plaintiff-client alleging that defendant-attorney failed to meet the standard of care in representing plaintiff regarding spousal support in underlying divorce

## Torts (continued)

action, it was error to deny defendant's motion to strike and to refuse to give a curative instruction in response to defendant's timely, specific objection to plaintiff's expert's testimony about the duration and amount of spousal support damages that went beyond the scope of expert's report and caught defendant off guard, and defendant was prejudiced since the jury would probably not have reached the same conclusion regarding damages if plaintiff's expert's damages calculation had not been admitted.

**Negligence.** Wilkins v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1141 | Ohio Court of Claims | 2/10/21 In action by inmate against state department, claiming use of force by one or more corrections officers, summary judgment is issued to department since prison in which inmate lives is a privately run prison and its employees are independent contractors and not agents of the department, which does not control the details of prison's employees' work and does not compensate, train, supervise or hire prison's employees.

**Wrongful imprisonment.** Brandon v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-418 | 10th Appellate District | 2/16/21 In plaintiff's action for wrongful imprisonment after his drug case was dismissed, it was not error to grant department of correction's motion to dismiss for lack of jurisdiction since plaintiff failed to obtain a preliminary factual determination from the trial court that he qualified as wrongfully imprisoned under R.C. 2743.48, he did not amend original complaint for wrongful conviction to bring action for wrongful imprisonment, and statute of limitations expired before action was commenced, R.C. 2743.16; also, the court distinguished wrongful imprisonment from false imprisonment.

**Medical malpractice/Merit.** Leckrone v. Kimes Convalescent Ctr., 2021-Ohio-556 | 4th Appellate District | 2/22/21 In executor of estate's action against convalescent center claiming that medical negligence caused decedent's death, trial court did not err in granting center's motion for judgment on the pleadings where, although executor provided affidavits of merit for expert witnesses pursuant to Civ.R. 10(D) (2), nurse's affidavit did not set forth sufficient grounds to establish competence to testify on causation of

death pursuant to Evid.R. 601(D), and physician's affidavit was defective as to causation because it was based on expert opinion of another.

**Slip and fall.** Cole v. Sylvester's North End Grille, 2021-Ohio-502 | 5th Appellate District | 2/23/21 In negligence slip and fall action by plaintiff-delivery driver-business invitee, alleging that he slipped on grease on floor at back entrance of restaurant, trial court did not err in granting summary judgment to defendants-restaurant and owner since, inter alia, plaintiff produced no evidence that the alleged greasy substance on the floor was caused by defendants or defendants' employees, or that they knew about the greasy substance on the floor, plaintiff testified that he did not observe any foreign substance on the floor, and he did not show what the substance was that he slipped on.

**Legal malpractice/Attorney fees.** McGraw v. Jarvis, 2021-Ohio-522 | 10th Appellate District | 2/25/21 In trustee's legal malpractice action against attorneys who drafted documents to create trust, alleging failure to meet the standard of care for, inter alia, not ensuring that all assets were transferred into trust, it was error to grant attorneys' motion for directed verdict regarding damages for legal fees associated with probate litigation where, although the trustee provided only lay testimony regarding attorney fees, she provided expert testimony to establish that attorneys breached their duty, trustee provided documentation and testimony itemizing fees approved by the probate court, and reasonableness of fees was a question for the jury, not the court.

**Defamation.** Hill v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-561 | 10th Appellate District | 3/2/21 In plaintiff's-inmate's defamation action against defendant-corrections department alleging that investigator falsely accused him in conduct report of conspiring to hide controlled substances, summary judgment in favor of defendant was error where investigator did not produce at hearing the video evidence or information from confidential source that he asserted would support his statements in conduct report, plaintiff's affidavit and corroborating evidence contradict the investigator's averments, and there is a disputed issue of fact whether investigator published report with actual malice.

**Medical malpractice.** White v. Durrani, 2021-Ohio-566 | 1st Appellate District | 3/3/21 In plaintiff-patient's vicarious liability claim filed against defendants-surgeon and his clinic for negligence, lack of informed consent, and fraud after surgery failed to correct plaintiff's medical issues, trial court did not err in granting defendants' motion for directed verdict since the surgeon did not perform the surgery and never met with plaintiff prior to surgery, plaintiff failed to show that surgeon recommended the surgery, and plaintiff never viewed bills for alleged excess charges and therefore could not have relied on them to show fraud.

**Medical malpractice.** DiMarzio v. Norch, 2021-Ohio-592 | 5th Appellate District | 3/4/21 In patient's medical malpractice action against physician for failure to make a proper diagnosis, which allegedly led to further injuries, summary judgment in favor of physician was not error since none of the patient's expert witnesses testified as to causation of later diagnoses, and loss-of-chance doctrine is not applicable because the patient was found to have a greater than even chance of survival.

**Abuse of process.** Stout v. Columbia Gas of Ohio, Inc., 2021-Ohio-609 | 2nd Appellate District | 3/5/21 In plaintiff's action against utility claiming abuse of process related to utility's action against him personally to recover for alleged failure to pay utility's bills where plaintiff asserted that utility knew he was not its customer, trial court did not err in granting summary judgment to utility since plaintiff failed to establish an ulterior motive outside the process itself to obtain payment on the account, and plaintiff failed to identify an act committed by utility in the course of its action against him, including pursuit of discovery, that was not proper in the normal conduct of the proceeding between the filing of its complaint and dismissal of the action.

**Battery/Negligence.** Haddix v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1529 | Ohio Court of Claims | 3/5/21 In plaintiff's battery and/or negligence action against defendant-state department alleging that corrections officer used unnecessary or excessive force, magistrate recommends summary judgment for defendant since the incident was initiated by plaintiff by obstructing the door to his cell, officer used force only to the extent necessary to control plaintiff and remove the

threat, and plaintiff suffered at most only minimal injuries.

**Medical malpractice.** Taylor-Jones v. Kettering Med. Ctr., 2021-Ohio-738 | 2nd Appellate District | 3/12/21 In medical malpractice action arising from incorrect diagnosis of mass in patient's neck, trial court's denial of defendants' motions for summary judgment on reasoning that the statute of repose violated equal protection was error since the statute does not establish an irrational classification between a negligently misdiagnosed plaintiff and a plaintiff with a retained foreign body because those plaintiffs are not alike in all relevant ways, R.C. 2305.113(C).

**Medical malpractice.** Couch v. Durrani, 2021-Ohio-726 | 1st Appellate District | 3/12/21 In actions by patients alleging that surgeries performed by surgeon were medically unnecessary and that hospital negligently retained surgeon as credentialed, trial court did not err in granting hospital's motions to dismiss on reasoning that the claims were barred by the medical malpractice statute of repose since negligent credentialing is a medical claim under the statute and surgeries at issue were performed more than four years prior to filing of these actions, R.C. 2305.113(E)(3)(b)(ii).

**Jury instruction.** Hayes v. Durrani, 2021-Ohio-72 | 1st Appellate District | 3/12/21 In estate administrator's action for, inter alia, negligence against surgeon for his care and treatment of decedent, judgment for surgeon is affirmed where the jury found that defendant's negligence was not the proximate cause of harm to decedent, and therefore plaintiff suffered no material prejudice by the trial court's decision to decline to instruct jury on surgeon's flight out of the country, which was information plaintiff wanted to use as a means of attacking the credibility of surgeon and his medical records, Evid.R. 806.

**Negligence.** Fhiaras v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1527 | Ohio Court of Claims | 3/15/21 In plaintiff's negligence action arising from being attacked by an unknown inmate, the magistrate recommends that defendant-state department's motion to dismiss the case pursuant to Civ.R. 41(B)(2) be granted since plaintiff presented no evidence at all establishing that defendant had notice regarding the eventual assault, regardless of the motivation behind it, and also offered no evidence establishing injuries.

**Negligence.** Jordan v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1526 | Ohio Court of Claims | 3/15/21 In plaintiff's negligence action against defendant-state department for injury sustained while playing basketball, magistrate recommends that judgment be rendered in favor of defendant since jumping and landing on an uneven outdoor basketball court involves a danger ordinary to the game, plaintiff assumed the risk that the court surface was uneven, defendant owed no duty to protect plaintiff from inherent risk, and even if primary assumption of risk did not apply, the grade change at edge of the basketball court was open and obvious.

**Wrongful imprisonment.** Walker v. State, 2021-Ohio-843 | 8th Appellate District | 3/18/21 In plaintiff's wrongful imprisonment action for his incarceration on void sentences for community control sanctions violations, trial court did not err in granting state's motion for judgment on the pleadings where plaintiff pled guilty in the cases in question and does not qualify as wrongfully imprisoned under R.C. 2743.48(A), community control sanctions violations are not qualifying offenses under the statute, and even if they were qualifying offenses, plaintiff's violation of the sanctions was not vacated for one of his void sentences.

**Damages.** Brandt v. Pompa, 2021-Ohio-845 | 8th Appellate District | 3/18/21 In plaintiff's action against defendant, who drugged and molested plaintiff when she was a minor, trial court did not err in reducing the amount of non-economic damages awarded plaintiff at trial, R.C. 2315.18, since statutory damage caps apply the limits as a matter of law to the facts found by the jury, the statute does not violate the right to trial by jury, and as the court held in *Simpkins*, the statute does not violate equal protection since it does not affect a minor victim of sexual abuse any differently from any other plaintiff, and it allows for meaningful remedies under the constitution.

**Veterinary malpractice/Fraud.** Kaiser v. Helbig, 2021-Ohio-887 | 3rd Appellate District | 3/22/21 Dismissal of horse owner's action against veterinarian alleging malpractice, breach of contract and fraudulent concealment/misrepresentation on reasoning that the action was filed outside the statute of limitations for veterinary medicine malpractice, R.C. 2305.09(C), was error since the fraudulent concealment/

misrepresentation claim is separate and independent from the veterinary malpractice claims and has a longer statute of limitations.

**Slip and fall.** Guthrie v. Giant Eagle, Inc., 2021-Ohio-1268 | 7th Appellate District | 3/22/21 In plaintiff's slip and fall negligence action against grocery store for injuries sustained when she fell in defendant's parking lot, summary judgment in favor of defendant was not error where the condition of the parking lot was open and obvious, the cracked asphalt was not hidden and was directly in line of sight between store exit and plaintiff's nearby vehicle, the day of incident was clear and dry, the stop sign did not block her view nor prevent her from noticing cracked pavement, and plaintiff knew for months that the parking lot was in need of repair.

**Wrongful death.** Vactor v. Franklin Blvd. Nursing Home, Inc., 2021-Ohio-945 | 8th Appellate District | 3/25/21 In plaintiff's wrongful death action against defendants-nursing home and nurse alleging that his mother's death was caused by defendants' negligent care, trial court erred in granting summary judgment in favor of defendants where there was question as to cause of death, and plaintiff submitted sufficient evidence to establish a jury issue that decedent required emergency medical care and that defendants' failure to send decedent to hospital caused her death.

**Abuse of process.** Turkoly v. Gentle, 2021-Ohio-965 | 7th Appellate District | 3/25/21 In plaintiffs' action against defendant for abuse of process and related claims in response to defendant's tortious-interference claim against plaintiffs following their medical malpractice action against defendant, trial court did not err in granting defendant's motion for directed verdict since plaintiffs failed to show probable cause as required to establish abuse of process, they failed to make a claim for malicious prosecution, which does not require a showing of probable cause, and defendant's conduct in making the claim was not extreme and outrageous.

**Medical malpractice/Evidence.** Eliis v. Fortner, 2021-Ohio-1049 | 9th Appellate District | 3/31/21 In medical malpractice action resulting in judgment for plaintiffs-appellees, trial court did not err in denying defendants-appellants' Daubert motion to exclude testimony of proximate cause based on a scientific theory, arguing that the court should

## Torts (continued)

have held a hearing and that the appellees' theory failed all four Daubert reliability factors, since the test of reliability is flexible, the trial court may, at its discretion, consider the factors to the extent that they are relevant, and appellants were given the opportunity to cross-examine the appellees' experts and provide testimony to refute experts' theory of the case.

**False imprisonment.** Rones v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1524 | Ohio Court of Claims | 3/31/21

In plaintiff's false imprisonment action, summary judgment is granted to defendant-state department since defendant presented affidavits with attached exhibits establishing that at all times relevant to his complaint, plaintiff was under a valid sentencing entry and that plaintiff was subject to post-release control at the time of his arrest; as well, plaintiff failed to respond to defendant's motion for summary judgment.

**Law of the case.** Stakich v. Russo, 2021-Ohio-1098 | 8th Appellate District | 4/1/21 In plaintiff's action for, inter alia, malicious prosecution against judge for making claims leading to civil protection order issued against plaintiff and arrest after he marched through judge's neighborhood loudly singing lyrics the judge thought were threatening, summary judgment in favor of judge was not error where sheriff's deputy who arrested plaintiff was previously granted summary judgment on the basis of sovereign immunity, and because the deputy relied on the judge's statement in determining probable cause, the law of the case doctrine applies to the extent that facts establishing probable cause were undisputed.

**Evidence.** Jones v. Cleveland Clinic Found., 2021-Ohio-1095 | 8th Appellate District | 4/1/21

In a wrongful death and medical malpractice action against defendants-clinic and physician for decedent's death following emergency department visit and subsequent treatment, judgment in favor of defendants is affirmed on remand where plaintiff-estate administrator failed to comply with court's standing orders regarding discovery disputes and therefore invited any error as to her motion to compel, and plaintiff also waived any error related to exclusion of sonographer's deposition testimony pursuant to motion in limine because plaintiff never proffered the deposition

testimony or sought to introduce any of deposition testimony during the trial.

**Medical malpractice.** Adkins v. Women's Welsh Club of Am. Found., 2021-Ohio-1084 | 8th Appellate District | 4/1/21

In medical malpractice action filed by plaintiff-daughter of nursing home resident after her death, trial court did not err in granting summary judgment to defendants since plaintiff failed to file a timely affidavit of merit and failed to show good cause for an extension of time to file the affidavit, as required by Civ.R. 10(D)(2)(b).

**Defamation.** Montgomery v. Greater Cleveland Regional Transit Auth., 2021-Ohio-1198 | 8th Appellate District | 4/8/21

In plaintiff-part-time employee's defamation action against defendant-transit authority, alleging that supervisor provided false information during a background check on his employment application to become a full-time employee, summary judgment in favor of defendant was not error since plaintiff signed an applicant release waiving claims related to the background check, he failed to show that he was unilaterally mistaken in signing the release, and supervisor's statements were not defamatory because they were either opinion or substantially truthful.

**Privilege.** Carter v. Pristine Senior Living & Post-Acute Care, 2021-Ohio-1211 | 2nd Appellate District | 4/9/21

In rehabilitation facility resident's and son's defamation action against facility for allegedly filing a false police report after son allegedly threatened nurse with violence, summary judgment in favor of defendant was not error since statements were made by private citizen-employee to police for the prevention or detection of crime and were entitled to qualified privilege, employee did not act with actual malice, and plaintiffs were not prejudiced by not having opportunity for additional discovery on the issue of privilege, Civ.R. 56(F).

**Negligence.** Moore v. Chagrin Valley Paving, 2021-Ohio-1302 | 8th Appellate District | 4/15/21

In plaintiff's action against defendants-city and paving company for damage his vehicle sustained when driving in construction zone over raised caster in road, trial court did not err in approving magistrate's decision finding plaintiff comparatively at fault since plaintiff was aware of alleged hazard in road, numerous signs posted around

construction zone warned drivers of potential hazards, and amount of damages awarded to plaintiff was based on the book value of his vehicle, which was not unreasonable, arbitrary or unconscionable.

**Legal malpractice.** R & J Solutions, Inc. v. Moses, 2021-Ohio-1315 | 10th Appellate District | 4/15/21 In legal malpractice action, trial court erred in ruling that client failed to prove claim for malpractice because it did not provide expert testimony, which was required to establish the standard of care; a layperson could determine, without expert assistance, if missing a deadline because it was overlooked and not the client's fault, conforms to a lawyer's standard of care.

**Assault and battery.** Pankey v. Ohio State Hwy. Patrol, 2021-Ohio-1317 | 10th Appellate District | 4/15/21 In plaintiff's assault and battery action against defendant-highway patrol for injuries sustained when he was forcefully removed from car during traffic stop, summary judgment in favor of defendant was not error where plaintiff ignored trooper's orders to exit vehicle and show his hands, plaintiff continued to reach toward passenger side floor board in vehicle, force was necessary to remove plaintiff from vehicle because he could have been reaching for a weapon, and some of plaintiff's injuries were sustained prior to traffic stop.

**Interference with contract.** QFS Transp., L.L.C. v. Wall Street Sys., 2021-Ohio-1323 | 1st Appellate District | 4/16/21

In plaintiff-shipping logistics company's action against defendant-competitor for tortious interference with a contract after defendant recruited trucking agency with which plaintiff had a contractual relationship, trial court did not err in granting summary judgment in favor of defendant where defendant admitted to recruiting trucking agency when it knew it was still plaintiff's agent but plaintiff failed to demonstrate that defendant intended to induce breach of contract and plaintiff failed to establish that defendant did not have competitive privilege since plaintiff's contract with trucking agency was at will.

**Evidence.** Bogdanov v. Ahres, 2021-Ohio-1322 | 1st Appellate District | 4/16/21 In negligence action arising from motor vehicle accident, trial court did not err in admitting defendant's expert's testimony about scientific studies on reasoning that the learned

treatise exception to hearsay applied where the expert summarized findings of unnamed studies in his conclusion, he did not provide precise statement from the studies, he mentioned the studies to provide justification for his own opinion, and the expert clarified that he offered his opinion based on his education, training, experience and independent medical examination, Evid.R. 802 and 803(18).

**Fraud.** Cunningham v. Michael J. Auto Sales, 2021-Ohio-1390 | 1st Appellate District | 4/21/21 In vehicle buyer's fraud action against vehicle seller for not disclosing defects at time of purchase, trial court did not err in granting summary judgment in favor of buyer where, although vehicle was purchased "as is," evidence showed that seller knew the vehicle was defective at the time of sale, and because rules of evidence do not apply to small-claims matters, photographs taken of seller's computer screen were properly entered into the record.

**Wrongful imprisonment.** Jackson v. State, 2021-Ohio-1409 | 8th Appellate District | 4/22/21 In plaintiff's wrongful imprisonment action arising from dismissal of criminal case without prejudice for unavailability of a witness, trial court did not err in granting summary judgment to the state on reasoning that the action was barred by the six-year statute of limitations, R.C. 2743.48, since plaintiff's argument that his cause of action accrued only after expiration of the statute of limitations for his alleged offense because the state could refile charges at any time during that period is without merit since the possibility of a refiled action did not preclude plaintiff from filing a wrongful imprisonment action prior to the expiration of the criminal statute of limitations and the possibility did not otherwise operate to somehow toll the six-year statute of limitations.

**Legal malpractice.** Molnar v. Wong, 2021-Ohio-1402 | 8th Appellate District | 4/22/21 In plaintiffs' legal malpractice action claiming that defendants-attorneys made misrepresentations which caused plaintiffs to be subjected to deportation proceedings where plaintiffs also made allegations against defendants that resulted in plaintiffs' ability to obtain non-immigrant status under the U visa program, trial court did not err in denying plaintiffs' motion to quash defendants' subpoena for documents pertaining to police

investigation of defendants' alleged offenses which plaintiffs used to obtain non-immigrant status since plaintiffs were no longer in jeopardy of deportation and evidence including U visa applications may be used for defendants' defense.

**Fraud.** Navistar, Inc. v. Dutchmaid Logistics, Inc., 2021-Ohio-1425 | 5th Appellate District | 4/22/21 In plaintiff-logistics company's action against defendant-truck manufacturer for, inter alia, fraud for nondisclosure resulting in ongoing issues with trucks plaintiff purchased, judgment in favor of plaintiff was not error where, although judgment was rendered in favor of defendant on breach of contract claim, the economic loss rule does not bar the fraud claim because defendant breached duties independent of those imposed by warranty by purposely failing to disclose material information, and warranty disclaimer does not preclude fraud claim for concealment of information.

**Torts-Wrongful imprisonment/Jury trial.** McClain v. State, 2021-Ohio-1423 | 1st Appellate District | 4/23/21 In action for wrongful imprisonment, judgment in favor of state after bench trial is affirmed, and plaintiff's argument that he was entitled to a jury trial is without merit; under the jury trial requirements of R.C. 2311.04, wrongful imprisonment is not an action for the recovery of money only because it is a two-step process first requiring a declaration that a plaintiff is a wrongfully imprisoned individual, and wrongful imprisonment is a special proceeding that did not exist at common law, also not to be tried to a jury.

**Medical malpractice.** Couch v. Dayton Pain Ctr., L.L.C., 2021-Ohio-1428 | 2nd Appellate District | 4/23/21 In plaintiff's negligence action against defendant-physician for leaving a piece of wire in her back following surgery to remove a stimulator device, trial court did not err in excluding deposition testimony from plaintiff's expert regarding standard of care since expert did not practice in same or substantially similar field as defendant and was therefore not qualified to offer testimony about defendant's standard of care, and even if trial court erred by refusing to admit the opinion testimony, any such error was harmless because the standard of care was not at issue.

**Bailment.** Wilson v. Evans Motorworks Ohio, L.L.C., 2021-Ohio-1435 | 2nd Appellate District | 4/23/21 In plaintiff's bailment action against defendant-vehicle seller seeking damages after defendant released vehicle to third party following repair work, summary judgment for defendant was not error since plaintiff did not have title to the vehicle where he assigned title at time of purchase to friend, determined by trial court to be an assignment to avoid paying child support, and also plaintiff did not own car under purchase-money trust because he assigned title to friend for an unlawful purpose.

**Defamation/Interest.** Reo v. Lindstedt, 2021-Ohio-1455 | 11th Appellate District | 4/26/21 In plaintiff's defamation action alleging online harassment, resulting in judgment for plaintiff, trial court did not err in denying plaintiff's motion for pre-judgment interest since plaintiff failed to show that defendant failed to make a good faith effort to settle, R.C. 1343.03(C), defendant legitimately disputed his liability as to plaintiff's claims and did not seek to unnecessarily delay the case, and defendant's improper use of personal attacks in pleadings did not constitute failure to make a good faith effort to settle.

**Medical malpractice.** Janson v. Durani, 2021-Ohio-1467 | 1st Appellate District | 4/28/21 In consolidated appeals of medical malpractice actions involving a variety of claims against physician and hospital, trial court did not err in granting hospital's motions to dismiss since the actions were filed outside the medical malpractice statute of repose; specifically, negligent credentialing and fraud claims are medical claims under R.C. 2305.113 and are subject to the statute of repose, equitable estoppel is not an exception to the medical malpractice statute of repose, and although spoliation-of-evidence claims are not medical in nature, plaintiffs cannot show disruption of their cases because all other claims were dismissed and spoliation-of-evidence claims would inevitably fail.

**Medical malpractice/Privilege.** Hance v. Cleveland Clinic Found., 2021-Ohio-1493 | 8th Appellate District | 4/29/21 In medical malpractice action in which patient asserts that surgeon operated on her based on a misdiagnosis and that the surgery decreased her life expectancy and left her permanently paralyzed from the waist down, trial court did not err in granting plaintiffs'

## Torts (continued)

motion for production of documents that referred to defendant-clinic's efforts to motivate its neurosurgeons to increase patient access and revenue since there was no evidence to support defendant's claim that the requested documents were privileged as arising from a utilization review committee involving the quality of patient care, R.C. 2305.252, and there also was no evidence that the requested documents, as redacted, contained trade secrets, R.C. 1333.61(D).

**Pleading.** Bullard v. McDonald's, 2021-Ohio-1505 | 10th Appellate District | 4/29/21 In a purported negligence action by plaintiff-restaurant patron against defendant-restaurant arising from plaintiff's illness after eating at defendant's restaurant, trial court did not err in denying plaintiff's motion for judgment on the pleadings since it was filed before pleadings were closed where defendant had yet to file an answer, and the court did not err in dismissing complaint for failure to state a claim because plaintiff made no factual allegation of misconduct by defendant, Civ.R. 12(B)(6).

**Wrongful death/Medical claim.** Mercer v. Keane, 2021-Ohio-1576 | 5th Appellate District | 5/4/21 In executor's medical malpractice action, later amended to a wrongful death action, against defendants-physician and radiology group for failure to diagnose a mass clearly visible on her husband's MRI, trial court did not err in granting partial summary judgment and judgment on the pleadings in favor of defendants since the wrongful death complaint superseded the original complaint and raised a new and independent cause of action, and although the medical malpractice claim had been timely filed, the later wrongful death claim was barred by the medical-claim statute of repose, even though claims were based on the same event, R.C. 2305.113(C).

**Negligence.** Covington v. Butcher, 2021-Ohio-1596 | 10th Appellate District | 5/6/21 In plaintiff's negligence action for injuries sustained when she was struck by a vehicle operated by defendant, summary judgment in favor of defendant was not error since plaintiff's unauthenticated evidence failed to show that defendant was intoxicated at the time of the accident or that he was speeding or failed to maintain an assured clear distance

ahead, and testimony of the parties showed that proximate cause of injury was co-defendant's failure to yield to defendant's vehicle, leading to initial impact taking place in defendant's lane of travel, R.C. 4511.21.

**Negligence.** Miles v. Cummins, 2021-Ohio-1621 | 3rd Appellate District | 5/10/21 In negligence action by plaintiff who was injured when he was ejected from ATV driven by defendant as the vehicle hit a divot in yard, trial court did not err in granting defendant's motion for summary judgment since plaintiff did not produce evidence that defendant operated the ATV in a reckless manner causing him injuries, and further plaintiff testified that defendant was not out of control and that she handled the vehicle well.

**False imprisonment.** Jackson v. Ohio Dept. of Rehab. & Corr., 2021-Ohio-1642 | 10th Appellate District | 5/11/21 In plaintiff's action for, inter alia, false imprisonment, alleging that defendant-department of corrections imprisoned him on a facially void document after he violated his parole, summary judgment in favor of defendant was not error where a typographical error in sentencing entry does not affect the authority of the parole board to revoke parole for a new felony offense, plaintiff's term of incarceration was consistent with time imposed for his revoked sentence as well as new felony conviction, and there is no evidence he was held beyond his lawful term.

**Negligence/Res ipsa loquitur.** Heiert v. Crossroads Community Church, Inc., 2021-Ohio-1649 | 1st Appellate District | 5/12/21 In negligence and declaratory judgment action by plaintiffs who were injured in boiler explosion resulting from installation of jumper wire at defendant-church, summary judgment for church and related defendants was not error since res ipsa loquitur did not apply where there was no evidence to establish when the jumper wire was installed, and multiple parties, including plaintiffs, may have been at fault for installing the jumper wire.

## Workers' Compensation

**Res judicata.** King v. Republic Steel, 2021-Ohio-861 | 5th Appellate District | 3/18/21 In claimant's application for workers' compensation benefits for injuries sustained as a result of repetitive nature of job, trial court erred in granting

summary judgment to employer on reasoning that claim was barred by res judicata since claimant's prior claim for benefits for same diagnosis was denied for insufficient information, and therefore prior claim was not adjudicated on the merits, so res judicata did not apply, but the question remains whether claimant has the right to participate in the workers' compensation fund, R.C. 4123.512.

**Participation in fund.** Webster v. Altenloh Brinck & Co., U.S., Inc., 2021-Ohio-1072 | 6th Appellate District | 3/31/21 In employee's claim for participation in workers' compensation fund for a "closed head injury" after she slipped on a puddle and fell while on the job, trial court did not err in granting employer's motion for directed verdict where employee failed to provide evidence of harm to her head or expert testimony describing symptoms of her injury, and thus she did not satisfy her burden of producing sufficient medical testimony with a scientific basis or methodology to support her chiropractor's conclusions, R.C. 4123.01(C).

**Violation of specific safety requirement.** State ex rel. U.S. Tubular Prods., Inc. v. Indus. Comm., 2021-Ohio-1174 | Supreme Court of Ohio | 4/6/21 Denial of employer's petition for writ of mandamus to vacate commission's order finding that employer had violated a specific safety requirement and that the violation was the proximate cause of pressurized-pipe injuries to employee is affirmed since the commission's decision was supported by some evidence which showed that employee was an operator under Ohio Adm. Code 4123:1-5-01(B)(92) and that employer did not provide a means at the machine within easy reach of employee for disengaging it from its power supply, supporting the conclusion that employer violated Ohio Adm. Code 4123:1-5-05(D)(1).

**Permanent total disability.** Le v. Ohio Indus. Comm., 2021-Ohio-1169 | 10th Appellate District | 4/6/21 Claimant's petition for writ of mandamus seeking to order commission to vacate its denial of relator's application for permanent total disability (PTD) benefits is denied since there was some evidence to support staff hearing officer's (SHO) decision that relator is capable of remunerative employment at the sedentary level as a manicurist, his former occupation, where the SHO relied on doctor's report and properly considered non-medical



factors such as age, work history and transferable skills and concluded that, on balance, they did not support relator's claim for PTD benefits.

**Pleading.** Cirino v. Bur. of Workers' Comp., 2021-Ohio-1382 | 10th Appellate District | 4/20/21 In plaintiff's action against defendant-bureau of workers' compensation for permitting bank to charge fees associated with an authorized debit card program, trial court did not err in granting defendant's motion for judgment on the pleadings on plaintiff's equitable claims since plaintiff's claims are viewed as legal claims and not equitable claims, restitution and equitable disgorgement are remedies rather than claims, and the transaction fee in question is charged and retained by the bank and not the defendant, precluding claim for unjust enrichment, R.C. 4123.341.

**Jury verdict.** Jacovetty v. Browning Ferris Indus., 2021-Ohio-1400 | 8th Appellate District | 4/22/21 In employee's application for workers' compensation benefits for an injury that developed on the job, trial court erred in granting employer's motion for a new trial on reasoning that the jury verdicts were inconsistent since the two verdict forms given to the jury related to employee's right to participate in benefits, and thus were not in conflict, where one was for his condition being caused by his employment and the other was for his condition being aggravated by his employment, Civ.R. 59(A)(7), R.C. 4123.74.

**Permanent total disability.** State ex rel. Franta v. Indus. Comm., 2021-Ohio-1501 | 10th Appellate District | 4/29/21 Petition for writ of mandamus to compel commission to set aside order denying claimant permanent total disability (PTD) compensation and to enter an order granting benefits is denied since physician's report was internally consistent and unequivocal and some evidence that claimant is capable of sustained remunerative employment where physician found that claimant could sustain a static set of tasks without fast pace or frequent changes and could interact with a small number of people, and claimant provided no legal support for her assertion that she should be awarded PTD on the basis that it was unlikely she could find an employer willing to accommodate certain work limitations.

**Permanent total disability.** Mitton v. Indus. Comm., 2021-Ohio-1640 | 10th Appellate District | 5/11/21 Claimant's petition for writ of mandamus to compel commission to vacate its order denying his application for permanent total disability is denied since there was some medical evidence that claimant was capable of sedentary work where physician's report appropriately considered the limitations imposed by claimant's allowed conditions, and based on that report, the commission could conclude that claimant had the residual functional capacity to perform sedentary work.