

# Court of Appeals of Ohio

## *Eleventh Appellate District*

Cynthia Westcott Rice  
Judge

Thomas R. Wright  
Presiding/Administrative Judge

Mary Jane Trapp  
Judge

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**April 15, 2019**

**R E L E A S E**

### **ASHTABULA**

2018-A-0046      STATE OF OHIO, Plaintiff-Appellee v. MICHAEL C. JAMESON, Defendant-Appellant.

Judgment reversed and remanded. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON)

CRIMINAL LAW - motion to seal record; R.C. 2953.32; eligible offender; weigh defendant's interest against state's legitimate needs; nature and circumstances of underlying offense; state failed to advance a legitimate interest; insufficient evidence to conduct weighing exercise.

2018-A-0053      STATE OF OHIO, Plaintiff-Appellee v. KAREN MARIE TACKETT, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (WRIGHT) (CANNON)  
CRIMINAL LAW – court costs; R.C. 2953.08(G)(2); R.C. 2947.23; ability to pay; R.C. 2929.19(B)(5); 2947.14; Eighth Amendment.

2019-A-0023      STATE OF OHIO, Plaintiff-Appellee v. SHEILA M. EYAJAN, Defendant-Appellant.  
2019-A-0025  
2019-A-0026

Appeals dismissed. See Memorandum Opinion and Judgment Entry. [CANNON] (WRIGHT) (LYNCH)

APPELLATE REVIEW-CRIMINAL - judgment striking motion to appoint alternative counsel is not final appealable order when case has not concluded; final order in criminal case is conviction and sentence; premature appeal.

**LAKE**

2018-L-036      STATE OF OHIO, Plaintiff-Appellee v. DAVID V. ROCK, JR., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON) CRIMINAL LAW - Crim.R. 32.1; Civ.R. 60(B); Evid.R. 201; OVI; DUI; R.C. 4511.19; R.C. 2941.1413; enhanced conviction; motion to withdraw no contest plea; plea was not uncounseled and without colloquy; no constitutional or statutory right to appointed counsel in collateral attacks; abuse of discretion; manifest injustice; barred by res judicata.

2018-L-037      STATE OF OHIO, Plaintiff-Appellee v. DAVID V. ROCK, JR., Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON) CRIMINAL LAW - Crim.R. 32.1; Civ.R. 60(B); Evid.R. 201; OVI; DUI; R.C. 4511.19; R.C. 2941.1413; enhanced conviction; motion to withdraw no contest plea; plea was not uncounseled and without colloquy; no invalid waiver of counsel; no constitutional or statutory right to appointed counsel in collateral attacks; abuse of discretion; manifest injustice; barred by res judicata.

2018-L-065      STATE OF OHIO, Plaintiff-Appellee v. JIMMIE D. RICE, JR., Defendant-Appellant.  
2018-L-066

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (RICE) (CANNON) CRIMINAL LAW - victim's rights; Marsy's law; right to counsel; standing; compelling a witness to testify; not coercive; no violation of due process; sufficiency of the evidence; menacing by stalking; robbery; burglary; manifest weight of the evidence; ineffective assistance of counsel; grand jury; voluntarily testified.

2018-L-076      STATE OF OHIO, Plaintiff-Appellee v. PETER MUSACCHIO, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON) CRIMINAL LAW - gross sexual imposition; R.C. 2907.05; R.C. 2953.08; review of sentencing; court fairly considered the serious and recidivism factors of R.C. 2929.12; sentence was greater than joint recommendation; sentence was not clearly and convincingly contrary to law.

2018-L-094      KERRI HATCH, Plaintiff-Appellant v. GARY HATCH, Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (LYNCH) DOMESTIC RELATIONS - divorce; inheritance; separate property; improvements to marital home; commingling; receipts; expenses itemized; traceable; bonuses; deposited; used for marital bills; denial of motion for attorney fees was reasonable and equitable.

2018-L-103            STATE OF OHIO, Plaintiff-Appellee v. CHRISTOPHER L. FLANIK, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (CANNON) (TRAPP) CRIMINAL LAW - guilty plea; attempted failure to comply; R.C. 2921.331; possession of cocaine; R.C. 2925.11; R.C. 2953.08; consecutive sentences were supported by record and not contrary to law; court considered statutory factors of R.C. 2929.12; R.C. 2929.14.

2018-L-110            ANTHONY DOMENIC REO, et al., Plaintiffs-Appellants v. UNIVERSITY HOSPITALS HEALTH SYSTEMS, Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (RICE) (CANNON) CIVIL – motion to disqualify counsel; Prof.Cond.R. 3.7; Telephone Consumer Protection Act; Consumer Sales Practices Act; Telephone Solicitation Sales Act; abuse of discretion; evidentiary hearing; non-oral hearing; admissible; Evid.R. 402; Evid.R. 501; R.C. 2945.42; R.C. 2317.02(D); spousal privilege; confidential; spousal incompetency; Evid.R. 601(B); necessary witness; authentication; Evid.R. 901(A); Evid.R. 901(B)(5); exceptions; uncontested matter; substantial hardship; distinctive value; scope of disqualification; actual trial; expansive; all phases of litigation.

**PORTAGE**

2018-P-0094            KODY M. OSCO, Relator v. LAURIE J. PITTMAN, Respondent.

Petition denied. See Per Curiam Opinion and Judgment Entry. (RICE) (CANNON) (LYNCH)

MANDAMUS - R.C. 2911.12; R.C. 2903.11; R.C. 2731.04; lower court's judgment entries were sufficient without including findings of fact and conclusions of law.

2019-P-0011            STATE OF OHIO, Plaintiff-Appellee v. ASHLEY M. BIKA, Defendant-  
2019-P-0012            Appellant.

Appeals dismissed. See Memorandum Opinion and Judgment Entry. [LYNCH] (RICE) (CANNON)

APPELLATE REVIEW - App.R. 5(A); delayed appeal; no reasons for the delay are set forth in the motion.

**TRUMBULL**

2018-T-0055            ANN KARNOFEL, Plaintiff-Appellant v. SUPERIOR WATERPROOFING, INC., Defendant-Appellee.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (WRIGHT) (CANNON) CONTRACTS - vexatious litigator; leave of court; motion for 60(B); newly discovered evidence; previous case; res judicata; privity of interest; mutuality of claims; pro se litigant.

2018-T-0060            STATE OF OHIO, Plaintiff-Appellee v. SHAUN RYAN SIMPSON, Defendant-Appellant.

Judgment affirmed. See Opinion and Judgment Entry. [RICE] (WRIGHT) (LYNCH)

CRIMINAL LAW - felony murder; tampering with evidence; bench trial; voluntary, knowing, and intelligent waiver of right to jury trial; ineffective assistance of counsel; disclosure of conversation with defendant on record; allowing defendant to testify; manifest weight of the evidence; convictions supported by sufficient, credible evidence.

2018-T-0074      WILLIAM ROGER DAVIS, Plaintiff-Appellant v. J&J CONCRETE, et al., Defendants-Appellees.

Judgment affirmed. See Opinion and Judgment Entry. [TRAPP] (WRIGHT) (CANNON) CONTRACTS – magistrate’s decision; abuse of discretion; breach of contract; substantial performance; essential purpose; immaterial breach; nominal damages.

2018-T-0105      ALCON MECHANICAL PIPING, INC., Plaintiff-Appellee v. AUSTIN RUBBER COMPANY, LLC, Defendant-Appellant.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [RICE] (WRIGHT) (CANNON)

APPELLATE REVIEW- lack of a final appealable order; R.C. 2505.02(B)(2); denial of motion to dismiss is not a final appealable order; appeal can be sought after disposition of entire case.

**RELEASED  
APRIL 10, 2019**

2018-G-0172      JANET BEAUMONT, Plaintiff-Appellant v. SYMANTEC CORPORATION, Defendant-Appellee.

Appeal dismissed. See Memorandum Opinion and Judgment Entry. [RICE] (CANNON) (LYNCH)

CIVIL - R.C. 2307.64; R.C. 1345.01; unsolicited email advertisements; motion to stay was vacated rendering all assignments of error moot; appeal dismissed.