

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 5, 2021

109547 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRANCE BRADLEY

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Manifest weight of the evidence; sufficiency of the evidence; felonious assault; complicity; inconsistent verdicts; firearm specifications.*

At trial, appellant was identified as one of three shooters who fired at group of people, hitting one and killing another. Where evidence indicated the shooting was planned and appellant was identified as firing a weapon, his convictions for multiple counts of felonious assault were based on sufficient evidence and were not against the manifest weight of the evidence. The jury's verdicts convicting appellant of felonious assault but acquitting him of the firearm specifications are not inconsistent verdicts that require reversal where the convictions are based on sufficient evidence whether appellant is considered as being a principal offender or as being an accomplice.

109817 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SHOREGATE TOWERS PARTNERS, LLC, ET AL. v ELLIOT ANTEBI, ET AL.

Affirmed.

Mary J. Boyle, A.J., Anita Laster Mays, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2305.06; contractual time limitations to file suit; Civ.R. 56(C); R.C. 5321.16(B); R.C. 1705.281(D); R.C. 1705.22(A)(1)(a); Civ.R. 55.*

The trial court's judgment was affirmed. The parties' agreement did not limit the time to file suit to one year. The trial court did not err when it denied defendants' summary judgment on their claims because there were genuine issues of material fact remaining. The trial court did not err when it awarded damages to plaintiffs for breach of fiduciary duty because defendant owed a fiduciary duty to the other members of the company. The trial court did not abuse its discretion when it did not grant default judgment to defendants because defendants did not move for default judgment.

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109818	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAMILLE MASSINGILL			

Vacated and remanded.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *R.C. 2923.12(A)(2)/carrying a concealed weapon; attempted tampering with evidence; motion for judgment of acquittal; sufficiency; manifest weight; jury instruction; jail-time credit; consecutive sentences.*

Appellee failed to establish an essential element of R.C. 2923.12 for carrying a concealed weapon; therefore, there was insufficient evidence to sustain a conviction for carrying a concealed weapon.

109835	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
DAN RECTOR v AMELIA DORSEY			

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Savings statute; R.C. 2305.19.*

The trial court did not err in dismissing the plaintiff's third attempt to file a tort action because that third filing was not authorized under R.C. 2305.19.

109852	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v PHILLIP SCOTT			

Affirmed and remanded.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 11; guilty plea; jury trial; unanimous verdict; knowing, intelligent, and voluntary; Ramos v. Louisiana; R.C. 2929.14(C)(4); consecutive sentences; R.C. 2929.11; R.C. 2929.12; court costs; nunc pro tunc.*

The court satisfied Crim.R. 11 when it informed the defendant that he would be waiving his right to a jury trial by pleading guilty. The court was not required to inform the defendant of his right to a unanimous jury verdict. The court made the appropriate consecutive sentence findings pursuant to R.C. 2929.14(C)(4) and these findings were supported by the record. The sentence was not otherwise contrary to law. Case remanded for a nunc pro tunc entry

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to accurately reflect the waiver of court costs.

109854	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
ALEXANDRA D. MORRIS v APRIL MORRIS, ET AL.			

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion for a new trial; nullity; timely; appeal; tolling orders; jury trial; settlement; midtrial; waive.*

Motion for a new trial is a nullity when the trial court discharges a jury during the middle of trial based on the parties advising the court that a settlement has been reached. Accordingly, the motion for a new trial under these circumstances would not toll the time to file an appeal. However, the appeal was timely because of the COVID-19 tolling orders in place. Where the record demonstrated that the parties orally agreed to settle their case following a verdict on liability or compensatory damages, but prior to the punitive phase, and the jury is discharged, the appellant waived on appeal any procedural ruling made during trial and the jury verdict on the compensatory award.

109871	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JON TROISI			

109874	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v NICHOLAS TROISI			

109875	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANDREW STECK			

109876	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MARTEK PHARMACAL COMPANY			

Vacated and remanded.

Sean C. Gallagher, P.J., and Eileen T. Gallagher, J., concur; Kathleen Ann Keough, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Motion to dismiss; drug trafficking; R.C. Chapter 4729; R.C. 2925.03; wholesaler; bill of particulars; specificity in pleading.*

The trial court erred in dismissing an indictment that met the minimum pleading standards and any challenges as to the lack of specificity in the bill of particulars did not prejudice the defendants' ability to present a defense at this early stage of the proceedings.

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109929	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
RICHARD GIBBS, ET AL. v FIREFIGHTERS COMMUNITY CREDIT UNION			

Affirmed.

Sean C. Gallagher, P.J., Larry A. Jones, Sr., J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Stay; arbitration; R.C. 2711.02(B); arbitration agreement; contract; de novo; waiver; class action; informed consent; notice; change in terms; insufficient; meeting of the minds.*

Affirmed the trial court's denial of motion for stay pending arbitration pursuant to R.C. 2711.02(B). Because the credit union failed to provide sufficient notice of the change of terms to an account agreement that added an arbitration and waiver of class action relief provision, there was no meeting of the minds and no binding agreement to arbitrate. The email notice that was sent implied that members had already agreed to the changes to the terms of the account agreement and did not alert recipients to the addition of the arbitration provision or set forth any opt-out requirement. A party cannot be forced to arbitrate a dispute that he or she did not agree to arbitrate.

109975	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v BARUCH WILKS			

Affirmed.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Cleveland Codified Ordinances 650.03(B); disorderly conduct; intoxication; risk of harm to self, another, or property of another.*

The trial court's judgment that appellant was guilty of the charge is supported by sufficient evidence and is not against the manifest weight.

110031	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.L.H.			

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *R.C. 3119.79(A); child support modification;*

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retroactive modification; pending motions to modify; remand order; law of the case.

The trial court did not abuse its discretion in modify Father's child support payments after the child's emancipation by retroactively recalculating and finding there were additional arrears and medical costs when the court was ordered to do so by the appellate court and there were several pending motions to modify the child support order.

110070	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v B.C.			

Affirmed.

Larry A. Jones, Sr., P.J., Kathleen Ann Keough, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Sufficiency; manifest weight; sexually oriented offenses.

Although the victims were of young age when the incidents occurred, their accounts of the numerous times, and how, appellant assaulted them was consistent. There was no evidence that the victim and her mother conspired with the victim's grandmother against appellant. There was sufficient evidence to sustain appellant's conviction, and appellant's convictions were not against the manifest weight of the evidence.

110117	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KNEE WACHEE			

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Murder; sufficiency of evidence; manifest weight of the evidence.

The state presented overwhelming circumstantial evidence at trial to prove appellant strangled his wife after he caught her engaging in sexual conduct with another man. The trial court's judgment is affirmed because there is no merit to appellant's claim that there was insufficient evidence to convict him or that his murder conviction was against the manifest weight of the evidence.

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110124	CLEVELAND MUNI. CITY OF CLEVELAND v GIG6 LLC	C	CRIMINAL MUNI. & CITY
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Affirmed.

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

KEY WORDS: *C.C.O. 3103.25; failure to comply; housing code violations; scope of community control sanctions.*

The scope of the community control sanctions imposed by the trial court does not constitute an abuse of discretion. The property was condemned several years prior to the enforcement action and the controls reasonably addressed the interests of the parties and the public to provide a safe and habitable construct.

110128	ROCKY RIVER MUNI. CITY OF FAIRVIEW PARK v SOLOMON Q. PEAH	C	CRIMINAL MUNI. & CITY
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Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Domestic violence; motion to vacate; Crim.R. 19(C)(1)(h); trial to the magistrate; discovery/photographs; Crim.R. 29/motion for acquittal.*

Appellant was represented by counsel at trial, failed to make an objection that the case was being heard by the magistrate, and acknowledged in open court that appellant's case was being heard to the magistrate. Thus, there was no error where the trial court denied appellant's motion to vacate the magistrate's decision.

None of appellant's contentions of a discovery violation met the standard of the three-prong test - there was no willful failure to disclose the photographs, appellant failed to show how the photographs would have assisted in preparation of appellant's defense, and appellant failed to show how he was prejudiced by not having the photographs prior to trial. There was no abuse of discretion by the trial court where the photographs were admitted.

There was sufficient evidence to sustain appellant's conviction for domestic violence, and appellant's claim of self-defense fails. Accordingly, appellant's counsel's motion for acquittal would have proved to be fruitless. Appellant's conviction was not against the manifest weight of the evidence.

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110396	JUVENILE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.H.			

Reversed and remanded.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Permanent custody; continuance.*

The trial court abused its discretion in denying mother's request for a continuance because mother was medically unable to attend the permanent custody hearing.