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August 20, 2020

108644 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIE MORRISON, ET AL. v HORSESHOE CASINO, ET AL.

Affirmed.

Eileen T. Gallagher, A.J., Frank D. Celebreeze, Jr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Summary judgment; affirm; immunity; probable cause; detain; arrest; search; vehicle; warrantless; liability; malicious.*

The trial court did not err by granting summary judgment in favor of the appellees. The responding on-duty police officers had probable cause to detain, arrest, and search the defendant and his vehicle. To the extent the defendants participated in the detention, arrest, and search, the defendant's federal and state law claims fail as a matter of law.

108691 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTIAN MITCHELL

Affirmed in part, reversed in part and remanded.

Patricia Ann Blackmon, J., Eileen T. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Aggravated murder; intent; transferred intent; sufficiency of the evidence.*

Trial court's instructions on transferred intent were erroneous; defendant's conviction for aggravated murder was supported by sufficient evidence.

108742 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LAWRENCE C. CLAGGETT

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Robbery; identification; victim; essential element; jail-time credit.*

Defendant's conviction for robbery upheld where the evidence showed that he caused harm by threatening the bank occupants and by pepper spraying the security guard upon entering the bank. Identification of the victim is not an essential element to a robbery

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offense. The defendant did not satisfy his burden in demonstrating that the trial court erred in calculating jail-time credit.

108802 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
CARI C. BRANDEN v JOHN T. BRANDEN

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: Cohabitation; spousal support; termination; R.C. 3105.18.

The trial court did not abuse its discretion in terminating indefinite spousal support order where husband established all requisite elements of cohabitation and there were also grounds for showing a change of circumstances warranting modification of spousal support under R.C. 3105.18; trial court acted within its discretion in ordering termination of spousal support effective as of 2016 or date of previous final appealable order.

108868 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WANDA YOUNG

Reversed and remanded.

Eileen T. Gallagher, A.J.; Kathleen Ann Keough, J., concurs in judgment only, and Patricia Ann Blackmon, J., dissents (with separate attached opinion).

KEY WORDS: Not guilty by reason of insanity; Reagan Tokes Act; plain error.

Trial court erred in limiting defendant's civil commitment to mental hospital to a maximum of 11 years where statute clearly and unambiguously provided a civil commitment for up to 16 and one-half years.

108878 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SENYON L. COLLINS

Affirmed.

Eileen A. Gallagher, J., Patricia Ann Blackmon, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Crim.R. 16; Brady violation; discovery violation; abuse of discretion; right to remain silent; prearrest silence;

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ineffective assistance of counsel; manifest weight of the evidence.

Brady v. Maryland is violated where suppressed exculpatory evidence is discovered after trial. Brady is not implicated where the state produces additional discovery on the day trial is set to begin.

A trial court has broad discretion to regulate discovery and determine the sanction for a discovery violation. When confronted with a discovery violation, a trial court must consider whether the violation is willful, whether foreknowledge of the undisclosed material would have benefitted defense preparation and whether the defendant was prejudiced. Where a court determines a discovery violation was unintentional, that the material was cumulative of evidence the defendant already possessed and that the defendant claimed no prejudice, the court does not abuse its discretion by permitting review of the material, inquiring whether it is materially different or prejudicial and permitting the defendant to seek a continuance.

A trial court does not abuse its discretion in denying a motion for a mistrial predicated on an alleged violation of the Fifth Amendment right to remain silent where no such violation occurred. The state may use a defendant's prearrest silence as evidence of the course of investigation. A detective's testimony that he was unable to schedule an interview with the defendant and that he attempted to speak with the defendant does not constitute a violation of the Fifth Amendment right to remain silent.

Following a minimal discovery violation and appropriate remedy by the court, a defendant is not denied the effective assistance of counsel on the basis that counsel did not request a delay in trial, object to inclusion of the evidence or seek a mistrial in response to the violation.

Conviction is not against the manifest weight of the evidence where the jury did not lose its way in resolving minimal conflicts in the evidence. Witness credibility and weight given to evidence are primarily determinations for the jury. Where victim was unequivocal that defendant shot a bullet into her house and the physical damage was consistent with her account, testimony from defendant's girlfriend that she was high on drugs and did not recall whether defendant fired gun is not evidence weighing heavily against conviction. Minor discrepancies between witness testimony unrelated to defendant's guilt is not evidence weighing heavily against conviction. Challenge to the quality of physical evidence that is merely cumulative of other undisputed evidence does not establish that conviction was against the weight of the evidence.

108995

COMMON PLEAS COURT

E

CIVIL C.P.-NOT JUV,DOM OR PRO

HELEN JEAN KALSKI v TODD W. BARTIMOLE, ET AL.

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Affirmed in part, reversed in part, and remanded.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Civ.R. 12(C) motion for judgment on the pleadings; Civ.R. 12(E) motion for a more definite statement; Civ.R. 12(F) motion to strike; legal malpractice claim; R.C. 2305.11; cognizable event; termination of the attorney-client relationship; competency; and equitable estoppel.

The trial court correctly found a Civ.R. 12(E) motion for a more definite statement could not be directed to a nonresponsive pleading and a Civ.R. 12(F) motion to strike, filed with regard to an answer, was moot when the answer satisfied Ohio's notice pleading requirements. A legal malpractice complaint was properly dismissed pursuant to a Civ.R. 12(C) motion for judgment on the pleadings when the complaint was filed more than one year after (1) the cognizable event that alerted plaintiff-appellant her attorney may have committed an improper act, and (2) termination of the attorney-client relationship. We remand plaintiff-appellant's claim against defendant-appellee that did not file a Civ.R. 12(C) motion or otherwise seek dismissal of the case, and therefore, the cause of action was unresolved by the trial court.

109008	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KEVIN MCKINNEY			

109123	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v KEVIN MCKINNEY			

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Consecutive sentences; R.C. 2929.14(C).

The trial court engaged in the analysis required under R.C. 2929.14(C) and the record contains evidence to support the court's findings, so consecutive sentences were upheld.

109083	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ERNEST HARRIS			

Affirmed.

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

KEY WORDS: Crim.R. 29/motion for acquittal; sufficiency; manifest weight; ineffective assistance of counsel.

Evidence submitted at trial was sufficient to establish appellant's constructive possession of the drugs found in appellant's home.

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Appellant's convictions are sustained by sufficient evidence, and appellant's convictions are not against the manifest weight of the evidence. There was no error where the trial court denied appellant's motions for acquittal.

Appellant failed to show that trial counsel's performance fell below a reasonable, acceptable level of performance. Appellant's counsel was not ineffective.

109093 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE E.B., ET AL.

109094 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.B.

Affirmed.

Eileen T. Gallagher, A.J., and Larry A. Jones, Sr., J., concur; Kathleen Ann Keough, J., dissents (with separate opinion attached).

KEY WORDS: *Sexual contact; abused; dependent; custody; legal custody; residential parent; school; best interest; subject matter jurisdiction; abuse of discretion; environment; credibility; competent; clear and convincing.*

The juvenile court did not err by adjudicating a minor child as abused and the other minor child as dependent. There remained ongoing concerns with the children's safety in Mother's home. The juvenile court had subject matter jurisdiction to modify the parties' shared-parenting plan and did not abuse its discretion in determining that it was in the children's best interest to designate Father as the residential parent for school purposes.

109111 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.Y.

Affirmed.

Patricia Ann Blackmon, J.; Mary J. Boyle, P.J., concurs; Larry A. Jones, Sr., J., dissents with separate opinion attached.

KEY WORDS: *Custody proceeding; visitation dispute; agreed judgment entry; failure to raise issue in lower court; waiver on appeal.*

Appellant waived his right to challenge the lower court's judgment entry, and there is no basis upon which this court could find an abuse of discretion.