

December 8, 2022

111117 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DIMITRIUS MACKLIN

Affirmed in part, vacated in part and remanded.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Probable-cause determination; subject-matter jurisdiction; R.C. 2151.12; R.C. 2152.02(C)(5); child; sufficiency of evidence; manifest weight of evidence.*

Appellant argues the common pleas court had no jurisdiction over counts, including the most serious charge of aggravated murder, in which the juvenile court found no probable cause.

We conclude the juvenile court had subject-matter jurisdiction, properly held a probable-cause hearing, and the common pleas court had no jurisdiction over counts in which the juvenile court found no probable cause. Contrary to the state's argument, R.C. 2152.02(C)(5) was inapplicable to the instant matter. Although appellant had two separate and unrelated felony convictions and was serving prison sentences when the complaint was filed in the underlying matter, he was still deemed a "child" under the statute because the two previous felony convictions flowed from offenses committed after appellant reached age 18. Because appellant was already 18, those cases were directly indicted into the common pleas court. Critically, those cases did not involve a transfer from the juvenile court to the common pleas court.

As such, R.C. 2152.02(C)(5)(2) was not applicable, and the juvenile court possessed subject-matter jurisdiction under R.C. 2151.23(A) to resolve the criminal charges against appellant, as well as the province to exercise judicial discretion in determining whether there was probable cause to believe that appellant committed the criminal acts. Therefore, the common pleas court had no jurisdiction over the charges of aggravated murder and conspiracy. The jury acquitted appellant of aggravated murder, and we now vacate his conviction for conspiracy.

We also conclude that the state presented evidence, if believed, was sufficient to support the convictions for the counts in which the juvenile court found probable cause. The state presented the testimony of a resident who witnessed the homicide and whose surveillance camera captured the assailant speeding away in the victim's car. Appellant's DNA was found on the steering wheel and gearshift of the victim's vehicle. Location analysis of appellant's and codefendant's cellular phone records placed appellant in the vicinity of, and in the timeframe of, the homicide. Appellant's three codefendants testified that appellant was the shooter.

We also conclude that appellant's convictions were not against the manifest weight of the evidence. Following our review, we find nothing that indicates the jury clearly lost its way and created a manifest miscarriage of justice in finding appellant guilty.

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111228 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DONALD SHURY v PAUL CUSATO, ET AL.

Affirmed in part, reversed in part, and remanded.

Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur; Mary J. Boyle, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Civ.R. 50(B); judgment notwithstanding the verdict; defamation; commercial disparagement; R.C. 1345.09(F)(1); Consumer Sales Practices Act; attorney fees; Civ.R. 15(A); amended complaint; Civ.R. 37; denial of motions to compel; Evid.R. 404; character evidence; replevin.*

The trial court's denial of appellants' motion for judgment notwithstanding the verdict was not in error. The record reflects sufficient material evidence to create a factual question for the jury and lacks a basis to overcome the presumption of regularity in the jury's verdict. The trial court's grant of leave to amend the complaint did not constitute an abuse of discretion and appellants were not prejudiced thereby.

The trial court did not abuse its discretion by denying the motions to compel additional discovery of appellee or discovery from a third-party law firm regarding ownership of the vehicle. Ownership was not a prerequisite to the replevin action, or the Consumer Sales Practices Act claims, and appellants prevailed on the claims. The trial court's exclusion of appellants' witness to rebut appellants' liability for violating the Consumer Sales Practices Act, appellee's credibility and propensity for truthfulness, and ownership of the vehicle was not an abuse of discretion. The trial court's denial of attorney fees under R.C. 1345.09(F)(1) constitutes an abuse of discretion.

111254 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ANTHONY KUSHLAK

Vacated and remanded.

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

KEY WORDS: *R.C. 2929.25; community control; modification; journal entry; nunc pro tunc; clerical error.*

The trial court's judgment modifying the conditions of the appellant's community control is vacated because it was journalized after the deadline by which the appellant was ordered to comply with the modified conditions. The trial court also made a clerical error in its nunc pro tunc order correcting the dates of the appellant's offenses. The clerical error should be corrected by a second nunc pro tunc order that reflects the date of the amended

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sentencing entry, not the date of the original sentencing entry.

111270	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ADAM CASSHIE			

Affirmed.

Anita Laster Mays, P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Abuse of discretion; motion to continue; guilty plea; Crim.R. 11; motion to withdraw guilty plea; Crim.R. 32.1; jail-time credit.*

The trial court did not err in denying appellant's request for a continuance because the decision to grant or deny is within the sound discretion of the court. The trial court did not err in accepting the appellant's guilty plea because the plea was made knowingly, voluntarily, and intelligently and the trial court fully complied with Crim.R. 11. The trial court did not err in denying the appellant's motion to withdraw his guilty plea. The trial court correctly applied the appellant's jail-time credit to his sentence.

111276	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOQUAN JOSEPH			

111277	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOQUAN TYREE JOSEPH			

111278	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOQUAN JOSEPH			

Affirmed in part, reversed in part, and remanded.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Suppression of evidence; search warrant; probable cause; sufficiency of the evidence; knowledge; drug possession; R.C. 2925.11(C); firearm specification; having weapons while under disability; manifest weight of the evidence; ineffective assistance of counsel; jury instruction; plain error; mistrial; prejudice; merger; allied offenses of similar import; separate animus; consecutive sentences; R.C. 2929.14(C)(4); statutory findings.*

The trial court did not err in denying appellant's motion to suppress or his motion for mistrial. Further, his convictions were not against the manifest weight of the evidence and there was sufficient evidence to support them. Appellant's counsel was not ineffective, and the court did not err in imposing consecutive sentences. The

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trial court did err in failing to conduct an allied offense analysis for the having-weapons-while-under-disability charges prior to sentencing when the two charges facially presented a question of merger.

111320 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTIONE MILLER

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Felony; contrary to law; purposes and principles; recidivism; mitigation; consideration; factors; sentencing; Reagan Tokes; constitutional; due process; separation of powers; trial by jury.

The imposed sentence was not contrary to law. The indefinite sentencing scheme enacted under the Reagan Tokes Law is not unconstitutional. The trial court complied with the requirements of the Reagan Tokes Law when imposing an indefinite sentence of the defendant's second-degree felony conviction.

111325 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
TREASURER OF CUYAHOGA COUNTY, OHIO v VANESSA FITZGERALD, ET AL.

Dismissed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: R.C. 2329.26; R.C. 2329.27; R.C. 2325.03; Civ.R. 5(B); foreclosure; confirmation of sale; bona fide purchaser; service; notice.

Appellant's appeal is dismissed as moot because the property was sold to a third party, the sale was confirmed, and the proceeds were distributed on appellant's motion requesting distribution. Appellant's belated argument that notice of the sale was inadequate is not supported by the record and does not prevent dismissal.

111353 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: R.S., ET AL.

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Dismissed.

Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion).

KEY WORDS: *Anders brief; motion to withdraw as counsel; meritorious grounds for appeal; wholly frivolous; motion for permanent custody; R.C. 2151.414(B)(1); 2151.414(D)(1); and 2151.414(E); best interest of child.*

Counsel's motion to withdraw is granted, and appeal is dismissed. Upon independent review of the record, no arguably meritorious issues were found to exist. The juvenile court did not abuse its discretion or otherwise err in concluding that the award of permanent custody was in the best interest of the children and in awarding permanent custody to the agency.

111363	SOUTH EUCLID MUNI.	C	Criminal Muni. & City
CITY OF SOUTH EUCLID v INNOCENT NJOKU, JR.			

Reversed and remanded.

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

KEY WORDS: *Speedy-trial; COVID-19; tolling events; R.C. 2945.71; R.C. 2945.72.*

The trial court erred in finding that defendant's speedy-trial right was violated and dismissing his domestic violence charge. The record reflects that several events acted as valid tolling events, including the trial court's own administrative order citing difficulties holding jury trials due to challenges presented by the COVID-19 pandemic. The trial court's order dismissing the case failed to consider any of these valid tolling events.

111369	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOHN JOHNSON, JR.			

111371	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JOHN JOHNSON, JR.			

Reversed and remanded.

Anita Laster Mays, J., Sean C. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Reagan Tokes Law.*

The trial court erred by not sentencing the defendant to an indefinite sentence under the Reagan Tokes Law.

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111382 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SYLVIA KOREY v PLANNING & ZONING COMMISSION OF THE VILLAGE OF HUNTING VALLEY

Affirmed.

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

KEY WORDS: *Administrative appeal; constitutional challenge; as applied; particular property; zoning ordinance; five-acre minimum; single family; presumption; legislative judgment; police powers; burden of proof; beyond fair debate; open space; environmental values; character; proposed use; multi-family; condominiums; historic preservation; expert testimony; admission; gatekeeper; discretion; harmless error.*

Affirmed the judgment of the common pleas court finding the Village of Hunting Valley's zoning ordinances as applied to appellant's property are constitutional. Appellant failed to demonstrate, beyond fair debate, that a zoning provision requiring a five-acre minimum per residential unit is arbitrary and unreasonable and without substantial relation to the public health, safety, morals, or general welfare of the community, as applied to prohibit her proposed use of her property, which she sought to convert from a single-family residence into a multi-family structure with six condominium units. The common pleas court did not abuse its discretion in the admission of expert testimony; and even assuming an error had occurred, it was harmless error.

111391 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GEORGE R. TAYLOR

Affirmed.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C); Reagan Tokes Law.*

Trial court properly made the necessary findings to impose consecutive sentences. Further, the record reflected that appellant committed three separate crimes over three months; had an extensive history that included multiple offenses, prior community-control-sanction violations, and a prison sentence; and committed harm to both a rape victim and an attempted felonious assault victim. The record supported the trial court's imposition of consecutive sentences.

The trial court properly imposed an indefinite sentence pursuant to the Reagan Tokes Law, and this court overruled appellant's challenges to the constitutionality of the Reagan Tokes Law en banc in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

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111420 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LYNNEL TERRY

Affirmed.

Michelle J. Sheehan, P.J., Cornelius J. O'Sullivan, Jr., J., and Mary J. Boyle, J., concur.

KEY WORDS: *Reagan Tokes Law; constitutionality.*

Appellant argued that his indefinite sentences imposed pursuant to the Reagan Tokes law were unconstitutional on the grounds the sentences violated his right to a jury trial, his right to due process, and the doctrine of separation of powers. Because the court overruled these arguments in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) (en banc), the judgments of the trial court are affirmed.

111460 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALEXANDER J. MILTON

Affirmed.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Reagan Tokes Law; indefinite sentence; constitutional.*

Trial court did not err in imposing an indefinite sentence under the Reagan Tokes Law because the law did not violate defendant's constitutional rights to a jury trial, the separation-of-powers doctrine, or due process rights.

111490 SOUTH EUCLID MUNI. C Criminal Muni. & City
CITY OF SOUTH EUCLID v SONYA D. BARGAINER

Reversed and remanded.

Kathleen Ann Keough, P.J., Mary Eileen Kilbane, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Misdemeanor; consecutive sentence; R.C. 2929.19(B)(1); contrary to law.*

Municipal court's imposition of consecutive sentences for first-degree misdemeanors was contrary to law because the total aggregate jail sentence of 720 days violated the provision of R.C. 2929.19(B)(1) limiting the maximum sentence of 18 months.

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111561 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MONIQUE CLEMONS

Reversed in part; vacated in part; and remanded.

Frank Daniel Celebrezze, III, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Community-control conditions; R.C. 2929.15; the Jones test; conceded error; abuse of discretion.*

The trial court abused its discretion when it imposed community-control conditions prohibiting defendant from patronizing anywhere alcohol is sold, served, or used; imposing random drug and alcohol testing; and requiring defendant to attend 12-step program meetings. Drugs and alcohol bore no relationship to the defendant's underlying offense. The record also did not establish that the defendant required rehabilitation or that drugs and alcohol played a role in defendant's criminality.

111604 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KRYSTAL A. SMITH

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Sentence; consecutive; R.C. 2929.14; drug possession.*

Judgment affirmed. The trial court complied with the requirements of R.C. 2929.14(C)(4) and made the required proportionality findings. Therefore, we cannot conclude that the record "clearly and convincingly" does not support these findings. Defendant's consecutive 24-month sentence is proper.

111665 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.H., ET AL.

Affirmed.

Eileen T. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Permanent custody; manifest weight; abuse of discretion; best interest of the child.*

Clear and convincing evidence supports the juvenile court's judgment granting permanent custody of the child to the Cuyahoga

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(Case 111665 continued)

County Division of Children and Family Services.