

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 13, 2020

107546 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DITECH FINANCIAL, LLC v VAT MANAGEMENT, LLC, ET AL.

Dismissed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Foreclosure; moot; confirmation of sale; order of confirmation.*

Appellant failed to obtain a stay of the trial court's judgment pending appeal. The subject property has been sold, the order of confirmation has been carried out, and the proceeds have been distributed. There is no relief that can be afforded to appellant. Accordingly, appellant's appeal is moot. Appeal dismissed.

107999 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TAYVON THOMPSON

Reversed and remanded.

Raymond C. Headen, J.; Frank D. Celebrezze, Jr., J., concurs with separate concurring opinion; Patricia Ann Blackmon, P.J., dissents with separate opinion.

KEY WORDS: *Motion to suppress; reasonable articulable suspicion; totality of the circumstances; Terry v. Ohio.*

The officer had a reasonable, articulable suspicion that Thompson was engaged in criminal activity. The defendant's failure to comply with police instructions, attempt to flee, and throwing a loaded firearm into a home constituted probable cause for his arrest.

108148 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RODERICK GILCREASE

Affirmed in part, vacated in part, and remanded.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Motion for mistrial; Fifth Amendment right to remain silent; abuse of discretion; bench trial; fair trial; sufficiency of the evidence; circumstantial evidence; discharging a firearm into a habitation; R.C. 2923.161(A)(1); discharging a firearm upon or over a public roadway; R.C. 2923.162(A)(3); manifest weight of the evidence; self-defense; force; consecutive sentences; R.C.*

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(Case 108148 continued)

2929.14(C)(4); supported by the record; R.C. 2953.08(G)(2).

The trial court did not abuse its discretion in denying the defendant's motion for a mistrial in this bench trial where the witness's allegedly improper reference to the defendant's assertion of his Fifth Amendment right to remain silent did not affect the trial court's decision-making and the defendant had not demonstrated the witness's statement deprived him of a fair trial. The state presented sufficient evidence from which a reasonable factfinder could infer that the defendant was the shooter at the victims' residences where the evidence showed that the defendant was in possession of a .40 caliber firearm at two of the four crime scenes, all of the .40 caliber casings recovered from each of the four crime scenes were fired from the same .40 caliber firearm, and two of the crime scenes involved the same victim. The defendant's convictions for discharging a firearm into a habitation and discharging a firearm upon or over a public roadway in the May 14 incident are not against the manifest weight of the evidence. The defendant's conviction for discharging a firearm upon or over a public roadway in the June 26 incident is not against the manifest weight of the evidence. The factfinder could reasonably believe that the defendant was justified in firing his weapon against an initial attack but he did not act in self-defense where he continued to shoot at the attacker after the initial threat was gone. Defendant's consecutive sentence was supported by the record. However, because there is no evidence in the record that the trial court imposed a sentence in open court on Count 13, carrying a concealed weapon, a limited remand for sentencing on this count is required.

108222 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MARGARET A. HUSTON v BROOKPARK SKATELAND SOCIAL CLUB, INC.

Reversed and remanded.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Civ.R. 56(C)/summary judgment; R.C. Chapter 4171/operation of roller skating facilities/duties of roller skaters; assumption of the risks.*

The trial court erred where it granted summary judgment to appellee. Affidavit and deposition testimony, when viewed favorably to appellant, created a genuine issue of material fact as to whether appellee acted recklessly.

108282 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ARTHUR MCDANIEL

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Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Sufficiency of evidence; manifest weight of evidence; rape; sexual battery; gross sexual imposition; kidnapping; stepfather; restraint; psychological pressure; right to testify; advise; ineffective assistance of counsel; consecutive sentences.*

Defendant's convictions for rape, sexual battery, and gross sexual imposition were not against the manifest weight of the evidence and were supported by sufficient evidence where one victim testified that defendant had forced vaginal sex with her, and both victims testified that defendant penetrated them vaginally with his fingers, performed oral sex on them, and forced them to perform oral sex on him, all over their objections. Defendant's convictions for kidnapping were not against the manifest weight of the evidence and were supported by sufficient evidence where both victims testified that defendant restrained them, and defendant's position as the victims' stepfather restrained the victims' liberty by the psychological pressure inherent in his position as their stepfather. Trial court had no duty to advise defendant of his right to testify; defense counsel was not ineffective; trial court made the requisite statutory findings to impose consecutive sentences.

108322 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GEORGE R. TAYLOR

Affirmed in part, reversed in part and remanded.

Patricia Ann Blackmon, J.; Anita Laster Mays, J., concurs; Eileen T. Gallagher, A.J., dissents with attached opinion.

KEY WORDS: *Motion to suppress; registration sticker; dashboard; console; probable cause.*

The trial court did not err in concluding that the traffic stop was supported by reasonable suspicion because the registration sticker was obstructed; where the officer smelled marijuana during traffic stop, search of passenger compartment was proper; the trial court properly denied the motion to suppress marijuana and ammunition found in console; the trial court erred in denying motion to suppress weapon (and related statements) found after officer took apart the dashboard during search.

108364 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEREK DION JACKSON

Affirmed.

Raymond C. Headen, J., Larry A. Jones, Sr., P.J., and Mary Eileen Kilbane, J., concur.

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(Case 108364 continued)

KEY WORDS: Guilty plea; Crim.R. 11; knowing, intelligent, and voluntary; sentence; nunc pro tunc.

Defendant's guilty plea was knowing, intelligent, and voluntary. The trial court properly corrected a mathematical error through a nunc pro tunc entry.

108390 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
C.S.J. v S.E.J.

Affirmed.

Raymond C. Headen, J., Larry A. Jones, Sr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Civ.R. 36, admissions, deemed admitted, discovery matters, motion to withdraw admissions.

Where plaintiff-appellee failed to timely answer admissions under Civ.R. 36, the admissions were deemed admitted. However, the trial court did not abuse its discretion in implicitly withdrawing the deemed admissions where (1) plaintiff-appellee proceeded to trial and challenged the truth of the admissions, and (2) the record indicated withdrawal would aid in presenting the merits of the case and would not prejudice the defendant-appellant in maintaining his action.

108425 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v XAVIER NEAL

Dismissed.

Raymond C. Headen, J., Larry A. Jones, Sr., P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Motion to withdraw; dismissed; Anders.

Counsel's motion to withdraw granted and appeal dismissed pursuant to Anders where there were no meritorious grounds for appeal.

108593 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DARRYL J. SMITH

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

CASE DECISION LIST

(Case 108593 continued)

KEY WORDS: Ineffective assistance of counsel; final appealable order; res judicata; Crim.R. 33; motion for a new trial; motion for leave; newly discovered evidence.

The trial court did not err or abuse its discretion in denying appellant's motion for a new trial and for revision of the judgment entry of conviction and sentence.

108602 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE ADOPTION OF S.L.P.

Affirmed.

Sean C. Gallagher, P.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Petition; adoption; R.C. 3107.06; R.C. 3107.07; consent; exception; objection; timely; motion to strike; hearing; jurisdiction; de minimis contact, support; abuse of discretion; manifest weight.*

Affirmed the probate court's decision to dismiss petition for adoption of minor child for lack of consent of the biological mother. The probate court did not abuse its discretion in deeming mother's objection to the adoption timely or by denying the petitioners' motion to strike mother's objection. The probate court had jurisdiction to hold a consent hearing. The probate court did not abuse its discretion in making factual determinations, and its determination that the petitioners had not established mother had failed without justifiable cause to provide more than de minimis contact with the minor or to provide for the maintenance and support of the minor during the requisite time period was supported by competent, credible evidence in the record and was not against the manifest weight of the evidence.

108716 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DUNCAN PARHAM

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Motion to vacate; void judgment; subject-matter jurisdiction; petition for postconviction relief; R.C. 2953.21; R.C. 2953.23; res judicata; indictment.*

The trial court did not err in denying appellant's untimely and successive petition for postconviction relief.