

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 11

February 16, 2023

110942 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIAM JOHNSON

Judgment reversed, vacated, and remanded.

Eileen A. Gallagher, J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, P.J., dissents (with separate opinion).

KEY WORDS: *Confrontation Clause; 911 call; non-testimonial statements; testimonial statements; primary purpose test; ongoing emergency; hearsay; excited utterance; harmless error.*

Where there was no ongoing emergency at the time of 911 call, alleged victim's statements to 911 dispatcher, identifying defendant as her assailant and reporting what he had done, were testimonial, and admission of those statements at trial violated defendant's Sixth Amendment right to confront the witnesses against him. Error in admitting 911 call was not harmless error where 911 call was the only evidence presented at trial establishing essential elements of the offenses of which defendant was convicted.

111361 LYNDHURST MUNI. G Civil Muni. & City
SHELENA BURKE v MAYFIELD BRAINARD AUTO SERVICES LLC, ET AL.

Affirmed.

Mary J. Boyle, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Pro se; complaint; small claims; jury trial request; judgment on the pleadings; motion to compel; magistrate decision; fail to file transcript.*

Judgment affirmed. Defendant-State Farm's motion for judgment on the pleadings was properly granted because pro se plaintiff's complaint failed to allege a claim against State Farm. Plaintiff did not comply with civil rules by failing to serve her discovery requests in an electronic format and not attempting to resolve the alleged dispute prior to filing her motion to compel. Plaintiff waived her right to a jury trial because she conditioned the jury trial request on the Lyndhurst Municipal Court's granting her transfer, which the court granted, and plaintiff did not make another request after that point in the proceedings. Plaintiff failed to file a transcript or affidavit of proceedings with her objections to the magistrate's decision. As a result, we presume that the municipal court considered all the evidence and arguments raised, and the court properly adopted the factual findings of the magistrate and limited its review of plaintiff's objections to the conclusions of law made by the magistrate.

CASE DECISION LIST

111472 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARRYL SMITH

Affirmed.

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

KEY WORDS: *Pro se litigant; postconviction-relief petition; res judicata.*

The trial court did not err by denying defendant's postconviction-relief petition; the arguments were barred by res judicata because they were reviewed and rejected by this court in the defendant's direct appeal of his convictions and sentence.

111495 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v DAISELLE A. MARTIN

Vacated and remanded.

Michael John Ryan, J., and Anita Laster Mays, A.J., concur; Eileen T. Gallagher, J., dissents (see separate opinion).

KEY WORDS: *Crim.R. 2(D) petty misdemeanor; Crim.R. 11(B); Crim.R. 11(E); guilty plea.*

Appellant's guilty plea was not knowingly, voluntarily, and intelligently made when the trial court failed to inform her that her guilty plea was a complete admission of her guilt. The substantial or partial compliance standard is no longer applicable to violations of Crim.R. 11 and reviewing courts do not consider the totality of the circumstances. Instead, pursuant to Dangler, the proper inquiry is, has the trial court complied with the relevant provision of Crim.R. 11? If the court has not complied fully with the rule, is the purported failure of a type that excuses a defendant from the burden of demonstrating prejudice? If a showing of prejudice is required, has the defendant met that burden?

The trial court's failure to inform appellant of the language in Crim.R. 11(B) that her guilty plea was a complete admission of her guilt did not comply with Crim.R. 11(E) and was a complete failure to comply; therefore, no showing of prejudice was required.

CASE DECISION LIST

111542 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAELEN T. BRABSON

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Aggravated robbery; felonious assault; involuntary manslaughter; consecutive sentences; Reagan Tokes sentence.*

Affirmed. *The defendant has not demonstrated that consecutive service of the five-year sentence imposed on one of the convictions arising in this case was clearly and convincingly not supported by the record.*

111574 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TONI CRISTINO, ET AL. v ROCK CREEK KITCHEN AND BAR

Reversed and remanded.

Mary Eileen Kilbane, J., and Frank Daniel Celebrezze, III, P.J., concur; Eileen T. Gallagher, J., (dissents with separate opinion).

KEY WORDS: *Negligence; summary judgment; no-duty winter rule; unnatural accumulation; improper accumulation.*

Summary judgment in favor of defendant business owner was inappropriate where genuine issues of material fact surrounding the applicability of the no-duty winter rule existed.

111578 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TERRELL SILVER

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Motion to withdraw guilty plea; Crim.R. 32.1.*

The trial court did not abuse its discretion when it denied the defendant's presentence motion to withdraw his guilty plea, which was filed on the morning of the sentencing hearing, because there was no legitimate basis to withdraw the plea other than a change of heart.

CASE DECISION LIST

111579 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v THOMAS D. HAWKINS, IV

Affirmed.

Sean C. Gallagher, J., Michelle J. Sheehan, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *GSI; App.R. 21; supplemental authority; Evid.R. 611; leading questions; Evid.R. 802; hearsay; Evid.R. 803; exceptions to hearsay; medical treatment or diagnosis.*

Affirmed. *The trial court did not abuse its discretion in permitting the prosecutor limited latitude in questioning a young victim through the use of leading questions eliciting the victim's out-of-court statements to another person and by permitting a social worker to testify as to the victim's statements made for the purposes of medical treatment or diagnosis.*

111597 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANDREW BARKER

Affirmed.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Murder; R.C. 2903.02(A) and (B); felonious assault; R.C. 2903.11(A)(1); improper discharge into a habitation; R.C. 2923.161(A)(1); jury instruction; self-defense; defense of another; sufficient evidence; manifest weight of the evidence; Reagan Tokes Law.*

The trial court did not commit plain error in failing to instruct the jury on defense of another.

Appellant's convictions for murder, felonious assault, and improper discharge into a habitation were not against the manifest weight of the evidence and were therefore supported by sufficient evidence. The appellant did not prove his affirmative defense of self-defense when the evidence showed that the appellant arrived on scene after a fight between two families had already ended and the appellant used his shotgun to shoot the victims through a closed second-floor window.

The jury did not believe appellant's argument that one of the people in the apartment was armed when several witnesses testified that the allegedly armed person was in the kitchen on the phone with police and the two people standing in the window were not armed. The jury also did not believe that the appellant threw a metal pipe into the second-story window. The Reagan Tokes Law is constitutional so the trial court did not err in sentencing the appellant to an indefinite sentence under the law.

CASE DECISION LIST

111599 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JERRY HARRIS

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Sufficiency of evidence; manifest weight of evidence; attempted unlawful sexual conduct with a minor; importuning.*

Defendant's convictions for attempted unlawful sexual conduct with a minor and importuning were supported by sufficient evidence and not against the manifest weight of the evidence where the evidence established that defendant knew the individual he was texting to arrange for sexual activity was 15 years old or was reckless with regard to that fact.

111602 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROMALAS L. JACKSON

Affirmed and remanded.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Rape; voir dire; prosecutorial misconduct; sufficiency; manifest weight; ineffective assistance of counsel; lesser included offense instruction; jury instruction; Reagan Tokes.*

Prosecutor did not engage in prosecutorial misconduct during voir dire when it asked jurors about their understanding of the phrase "no means no" in a rape trial.

Prosecutor did not engage in prosecutorial misconduct when it used the term "victim" and "survivor" to refer to the complaining witnesses in rape investigations generally and to the complaining witness in this case.

Trial court did not abuse its discretion in denying defendant's request for new counsel on the day of trial.

Defendant's rape and domestic violence convictions were supported sufficient evidence and were not against the manifest weight of the evidence.

Defendant was not denied the effective assistance of counsel even though his trial counsel failed to request a lesser-included offense instruction.

Indefinite sentence under the Reagan Tokes Law was constitutional, but was also contrary to law because the court failed to comply with the notification requirements set forth in R.C. 2929.19(B)(2)(c).

CASE DECISION LIST

111622 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JONATHAN WILLIAMS

Affirmed and remanded.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur

KEY WORDS: *Sufficient evidence; obstructing official business; R.C. 2921.31(A); moot; misdemeanor offense; affirmative act; intent to impede law enforcement.*

Appellant's appeal was not moot because he did not voluntarily serve his sentence; appellant's conviction for obstructing official business in violation of R.C. 2921.31(A) was supported by sufficient evidence where the evidence demonstrated he knowingly fled from the police to evade capture, thereby committing an affirmative act with the intent to impede law enforcement.

111645 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ROE DENTAL LABORATORY, INC. v DANIEL NOWAK

Dismissed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Final appealable order; R.C. 2505.02; Civ.R. 54(B).*

An appeal will be dismissed when the judgment appealed from is not a final appealable order.

Although Civ.R. 54(B) will allow the dismissal of a counterclaim to be immediately appealable, it only does so where the decision is a final order. Here, where the counterclaim involved venue and choice of law, two issues that are appealable after final judgment, the trial court's ruling on the counterclaim was not a final appealable order subject to immediate review.

Further, the trial court's other rulings on personal jurisdiction and on motions to strike were not final appealable orders because both are appealable after final judgment and do not preclude appellant's ability to proceed in the action.

111654 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OBREA WILLIAMS

CASE DECISION LIST

Affirmed.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Gross sexual imposition R.C. 2907.05(A)(1); endangering children; R.C. 2919.22(B)(1); Crim.R. 29; R.C. 2953.08(G)(2); felony sentence; R.C. 2929.11 and 2929.12.*

Appellant's convictions for gross sexual imposition and endangering children are not against the manifest weight of the evidence. Child victims often do not remember the exact dates of assault and even though the victim told police and CCDCFS social worker that the abuse began in September or October and testified it began in December, the victim's credibility was for the jury to assess. The trial court did not err in sentencing appellant to 18 months in prison because his sentence is not contrary to law. Our review of his sentence is limited and the appellant does not claim that the trial court made considerations that fall outside the principles and purposes of sentencing.

111660	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v JOHN A. BOYD			

Judgment affirmed in part; vacated in part.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Community-control sanctions; misdemeanor sentencing; criminal mischief; the Jones test; R.C. 2929.27(A); R.C. 2929.22(B).*

Judgment affirmed in part and vacated in part. The defendant entered a guilty plea to a single count of criminal mischief, a third-degree misdemeanor stemming from conduct related to tearing down a political sign at a gas station. After weighing the factors posed by the Ohio Supreme Court in State v. Jones, 49 Ohio St.3d 51, 53, 550 N.E.2d 469 (1990), for setting community-control conditions, we find that the trial court erred in requiring the defendant to submit to a substance abuse assessment and counseling and submit to substance abuse testing, but do not find that the trial court erred in requiring the defendant to attend anger management and complete a mental health screening.

111662	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KEVIN B. TRAVICK, JR.			

Reversed and remanded.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

CASE DECISION LIST

(Case 111662 continued)

KEY WORDS: Search; seizure; Fourth Amendment; motion to suppress; plain view; automobile exception.

Trial court erred in granting motion to suppress where police had probable cause to search vehicle under the automobile exception to the warrant requirement.

111666 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
KRISTINE M. LOVANO, ET AL. v SETJO, LLC DBA KIA OF BEDFORD

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Arbitration; waiver; totality of the circumstances; nonpayment; fees; leave; implicitly denied.

Parties' requests for leave to file a reply and surreply containing supporting documentation was implicitly denied when the trial court did not rule on the motions prior to denying appellant's motion to stay the proceedings and compel arbitration. Trial court did not abuse its discretion in denying appellant's motion to compel arbitration where the totality of the circumstances demonstrate that appellant waived its right to arbitrate by not paying their portion of the arbitration fees when the consumer-appellees complied with the contract and initially requested arbitration prior to filing their complaint.

111667 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.L., ET AL.

Affirmed.

Anita Laster Mays, A.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: R.C. 2151.413; R.C. 2151.414; termination of parental rights; child cannot be placed with either parent within a reasonable time or should not be placed with parents; permanent custody in child's best interest.

The juvenile court's judgment granting the agency permanent custody of the child was not against the manifest weight of the evidence. All of the court's findings under R.C. 2151.414(B)(1) were supported by clear and convincing evidence. Further, the court's best interest findings under R.C. 2151.414(D)(1) were supported by clear and convincing evidence.

CASE DECISION LIST

111676 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ASCENSION BIOMEDICAL, LLC v THE OHIO DEPARTMENT OF COMMERCE

Affirmed.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Administrative appeal; R.C. 119.12; medical marijuana; processor license.*

The trial court did not abuse its discretion in finding that the department of commerce's final order was supported by reliable, probative, and substantial evidence and was in accordance with law. The record contains ample evidence to support the hearing officer and the department's conclusions that the applicant failed to meet the mandatory criteria necessary to be eligible for a medical marijuana processor license.

111724 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL MCDONALD, JR.

Reversed.

Michael John Ryan, J., and Eileen T. Gallagher, J., concur; Anita Laster Mays, A.J., dissents (see separate opinion).

KEY WORDS: *Traffic stop; window-tint violation; motion to suppress; reasonable suspicion; trial court judgment issued after appeal.*

The trial court's judgment, which was issued after this appeal was taken, directly related to and affected the matter assigned as error on appeal and was, therefore, inconsistent with this court's jurisdiction to reverse, modify, or affirm the trial court's judgment. Therefore, the trial court lacked jurisdiction to issue its judgment while the appeal was pending and that judgment is void.

The record demonstrates that the officer had reasonable suspicion to stop the motorist. The officer testified that he observed the defendant driving a vehicle with window tint on the driver and front passenger windows that was extremely dark. The officer testified that the window tint on those two windows must allow 50 percent light in, and he did not believe they did. Even if the officer was mistaken about the window tint, that mistake would go to the sufficiency of the evidence, not the reasonableness of the stop.

CASE DECISION LIST

111729 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SHAWN WEILER v TECHNIPOWER INC., A GEORGIA CORP.

Affirmed.

Anita Laster Mays, A.J., Frank Daniel Celebrezze, III, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Motion to dismiss; failure to state a claim upon which relief can be granted.*

The trial court did not err by granting the appellee's motion to dismiss because the appellant failed to state a claim upon which relief can be granted.

111750 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: K.R.

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Parental rights; motion for continuance of trial; permanent custody; R.C. 2151.414(B)(1); child could not or should not be placed with either parent within a reasonable time; fail to remedy conditions that resulted in child's removal from custody; pending criminal charges; R.C. 2151.414(E) factors; best interest of the child; R.C. 2151.414(D)(1); guardian ad litem (G.A.L.); legal custody; motion to extend temporary custody; adequacy of guardian ad litem (G.A.L.) report and investigation; Sup.R. 48; R.C. 2151.281; Cuyahoga Cty. Juv.Loc.R. 15.*

Father's motion to continue trial because he sustained injuries in a motorcycle accident and was prescribed medications for those injuries did not demonstrate a continuance was necessary to secure fair treatment for Father. The trial court did not err when it denied Father's motion for continuance.

The record contains clear and convincing evidence to support the juvenile court's finding that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applied and that it was in the best interest of the child to grant permanent custody to the agency. The trial court's determination that legal custody to Father's friend was not in the child's best interest was supported by a preponderance of the evidence. The trial court's denial of Father's motion to extend temporary custody was not an abuse of discretion.

The record demonstrated that the guardian ad litem's (G.A.L.'s) investigation of Father sufficiently met the requirements of a G.A.L.

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 11 of 11

111848 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
L.E.P. v CUYAHOGA COUNTY, ET AL.

Affirmed.

Emanuella D. Groves, J., Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Summary judgment; workers' compensation claims; sexual conduct; R.C. 4123.01; R.C. 4123.01(C)(1) and R.C. 4123.01(K); threat of physical harm; force; legislative intent; de novo review.*

Affirmed the judgment of the Cuyahoga County Court of Common Pleas that granted the motion for summary judgment of Cuyahoga County et al., on Appellant's appeal from the denial of her workers' compensation claims. The record contained no genuine issue of material fact for trial on the issue of whether the inmate's actions were sexual conduct as defined by the Workers' Compensation Act. The trial court did not err by granting summary judgment to Appellee.