

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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March 14, 2019

106578 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL T. GRAYSON

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: R.C. 2929.14(C)(4); consecutive sentences; void; R.C. 2953.08.

The imposition of consecutive or concurrent service is tied to the finality of the individual sentence, and the trial court does not have continuing jurisdiction to reconsider the consecutive or concurrent service upon a remand to address other sentencing matters.

106753 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRENCE THOMAS KILBANE

Affirmed.

Eileen T. Gallagher, P.J., Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Domestic violence; self-defense; nondeadly force; manifest weight of the evidence; ineffective assistance of counsel.

Trial court applied correct standard for establishing claim of self-defense where the defendant used nondeadly force.

Defendant's domestic violence conviction was not against the manifest weight of the evidence where evidence showed that the defendant created the situation that gave rise to the affray.

Trial counsel was not ineffective even though he erroneously suggested that the defendant might have a duty to retreat where there was no evidence that the trial court applied the wrong standard for determining a claim of self-defense and the evidence showed that the defendant created the situation that gave rise to the fight.

106922 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY NEWLIN

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Affirmed.

Anita Laster Mays, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Involuntary manslaughter, drug trafficking, ineffective assistance of counsel, sufficiency of the evidence, manifest weight of the evidence, consecutive sentence findings, R.C. 2929.14.*

Trial counsel was not ineffective for withdrawing a motion to suppress where counsel stated on the record that, through discovery and further investigation, the suppression issues challenging the warrant and search were meritless. Appellant's convictions including involuntary manslaughter and drug trafficking were not against the manifest weight of the evidence where cell phone records demonstrated direct contact between the victim and appellant several times during the day of the victim's death, the heroin envelope at the crime scene contained appellant's DNA and matched those used by appellant during controlled drug buys and found at appellant's apartment, and the victim died promptly after ingesting the heroin.

The trial court complied with the consecutive sentencing factors pursuant to R.C. 2929.14 on the record and in the journal entry.

106954 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.J.

Reversed and remanded.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J. and Raymond C. Headen, J., concur.

KEY WORDS: *Delinquency adjudication by reason of kidnapping; R.C. 2905.01(A)(4); twerking; admissibility of statements by child victim regarding alleged sexual abuse; competency of alleged child victim to testify; Evid.R. 601; voir dire examination; Evid.R. 807; abuse of discretion; plain error.*

Juvenile court abused its discretion and committed plain error in determining that alleged child victim was incompetent to testify without conducting a proper voir dire examination of the child under Evid.R. 601(A).

106977 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TROY PARKS

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.

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(Case 106977 continued)

KEY WORDS: Crim.R. 29; sufficiency of evidence; motion to suppress, Miranda warnings waiver.

The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal where there was sufficient evidence to prove penetration as an element of rape. The trial court did not err by not suppressing appellant's statement during his bench trial after a finding that the signed Miranda warning waiver was valid. Additionally, appellant did not file a motion to suppress. Therefore, he waives any objection to its admission.

107029 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYSHAWN MCCOY

Affirmed in part, reversed in part, and remanded.

Stephen A. Yarbrough, J.,* Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.
*(Sitting by assignment: Stephen A. Yarbrough, J., retired, of the Sixth District Court of Appeals).

KEY WORDS: Kidnapping; evidence; inconsistent verdicts; severance; preindictment delay; maximum sentence.

That jury acquitted defendant of 13 counts and found him guilty of only one count does not mean that the guilty verdict is against the manifest weight of the evidence. Consistency in the verdict is not necessary because each count in an indictment is regarded as if it was a separate indictment.

Sufficient evidence existed to prove that defendant terrorized the victim while he restrained her liberty by repeatedly assaulting her and smothering her into unconsciousness and humiliating her by denying her access to the bathroom and forcing her to remain in soiled clothing.

Defendant failed to show actual prejudice resulting from preindictment delay because text messages showing why the argument occurred would not have justified the defendant's acts against the victim.

107040 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDREW HOMOLAK

Affirmed.

Stephen A. Yarbrough, J.,* Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.
*(Sitting by assignment: Stephen A. Yarbrough, J., retired, of the Sixth District Court of Appeals).

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(Case 107040 continued)

KEY WORDS: Guilty plea; knowing, voluntary, and intelligent; Crim.R. 11; totality of circumstances.

A trial court does not violate Crim.R. 11, when under the totality of the circumstances, the defendant was aware he would be sentenced to a mandatory prison sentence. Where the trial court does not declare that the defendant will be sentenced to a mandatory prison term, but where it is nevertheless clear from the record and from the severity of the defendant's crimes that he or she is ineligible for community control sanctions, there is substantial compliance with Crim.R. 11.

107055 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEON L. HICKS

Affirmed; remanded in part.

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

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); proportionality finding; clearly and convincingly not supported by the record; nunc pro tunc.*

Although trial court did not state verbatim at the sentencing hearing that consecutive sentences would not be disproportionate to the seriousness of defendant's conduct and the danger defendant poses to the public, requisite proportionality finding could be discerned from the trial court's statements on the record when viewed in their entirety. Trial court's findings under R.C. 2929.14(C)(4) were not clearly and convincingly unsupported by the record. Sentences affirmed; remanded in part for the trial court to issue a nunc pro tunc order incorporating the consecutive sentence findings made at the sentencing hearing into its sentencing journal entry.

107151 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v WILLIAM E. WILLIAMS

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Improperly handling firearms in motor vehicle; R.C. 2923.16; self-defense; R.C. 2923.12; handgun; principles and purposes of felony sentencing; R.C. 2929.11 and 2929.12.*

Self-defense is not available as an affirmative defense to improperly handling firearms in a motor vehicle in violation of R.C. 2923.16(B) when the weapon involved is a handgun. The trial court considered

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(Case 107151 continued)

the principles and purposes of felony sentencing and was not required to make findings under R.C. 2929.11 and 2929.12. The appellant's sentence was therefore not contrary to law.

107304 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.J., ET AL.

Affirmed.

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

KEY WORDS: Permanent custody; best interest of children; whether children can be placed with mother; clear and convincing evidence.

Permanent custody of children awarded to the agency affirmed on appeal. Mother failed to achieve objectives of case plan, failed to remedy conditions that caused the children to be removed from her care, continued to abuse drugs, and failed to maintain any type of housing.

107579 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.B., ET AL.

Affirmed.

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

KEY WORDS: Permanent custody, manifest weight of the evidence, clear and convincing evidence, R.C. 2151.414.

The record clearly and convincingly supported the trial court's decision awarding permanent custody to CCDCFS because evidence showed that the children could not be placed with mother within a reasonable period of time and granting CCDCFS permanent custody was in the children's best interests.

107633 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANIEL J. GREEN

Dismissed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Anders brief; limited remand.

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(Case 107633 continued)

In light of the earlier appeal and because the individual sentences were within the statutory range for each offense, there are no nonfrivolous arguments.