

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 11, 2023

111629 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KIMBERLEE A. GERSTON, TRUSTEE v PARMA VTA, LLC, ET AL.

111630 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KIMBERLEE A. GERSTON, TRUSTEE v PARMA VTA, LLC, ET AL.

Reversed and remanded.

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

KEY WORDS: *Arbitration award; motion to vacate; R.C. 2711.10; de novo review; waiver.*

The trial court erred in vacating the arbitration awards based upon its erroneous determination that Parma VTA had waived its right to arbitrate the Cash Call Issue. That issue arose later and had not been litigated at any time. Thus, Parma VTA's litigation of other issues between the parties had no bearing on whether it was entitled to arbitrate the Cash Call Issue.

111712 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSEPH KOMARA

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Prior consistent statement; Evid.R. 801(d); domestic violence; self-defense; credibility; manifest weight.*

The trial court did not err by denying rebuttal evidence of a prior consistent statement pursuant to Evid.R. 801(D). A review of the record reveals that the trial court did not make a ruling disallowing appellant to call a witness or introduce evidence. However, to the extent the appellant was disallowed from proffering evidence, we find that it was not a prior consistent statement contemplated by Evid.R. 801(D) because the evidence would have been both inconsistent and consistent with appellants testimony at trial.

Appellant's conviction for domestic violence was not against the manifest weight of the evidence. The jury heard testimony from appellant and the victim regarding the incident at issue. Both the appellant and the victim stated that the other was the initial aggressor of the incident. The jury also saw photos of each of their injuries. The jury was able to make a credibility determination to determine whether appellant or the victim was the initial aggressor and whether the appellant acted in self-defense. Judgment affirmed.

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111807 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GREGORY SANDERS

Affirmed in part, reversed, and remanded in part.

Michael John Ryan, J., and Eileen A. Gallagher, P.J., concur; Sean C. Gallagher, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Disseminating matter harmful to juveniles; obscene material; gross sexual imposition; endangering children; video of oral sex; sufficiency of evidence; weight of evidence; merger; plain error.*

A video shown to a seven-year-old of his mother engaged in a sex act is sufficient evidence of obscenity to support a disseminating matter harmful to juveniles conviction.

The disseminating matter harmful to juveniles conviction was not against the manifest weight of the evidence when the trial testimony described a video displaying oral sex. The actual video was not a prerequisite for the conviction.

The trial court committed plain error by not merging the convictions. There was only one act - the showing of a video - and therefore the disseminating matter harmful to juveniles and endangering convictions should have merged.

111892 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY HUNT

Affirmed.

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

KEY WORDS: *Self-defense; transferred intent; prosecutorial misconduct; closing argument; objective; reasonable belief; inconsistent verdicts; felonious assault; reckless assault; lesser-included offense instruction; manifest weight of the evidence; sufficient evidence.*

The trial court did not commit prejudicial error in instructing the jury on transferred intent where the evidence showed that the defendant was only trying to shoot a single target and the transferred-intent instruction was inapplicable.

Trial court's charge on self-defense, which included an element requiring proof that the defendant acted reasonably, was an accurate statement of the law.

Trial court properly refused request for a lesser-included-offense instruction on reckless assault where the evidence did not support

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a finding of reckless assault.

Inconsistent verdicts did not deprive the defendant of due process of law.

Prosecutor's argument that the defendant was required to act reasonably when acting in self-defense was not prosecutorial misconduct because the prosecutor's statements were consistent with the law on self-defense.

Because the defendant bears the burden of producing evidence to support a claim of self-defense, a self-defense claim is not subject to a sufficiency-of-the-evidence claim.

Defendant's felonious-assault convictions were not against the manifest weight of the evidence.

111905	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
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IN RE B.M.

Reversed in part and remanded.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Child support order; dependent tax exemption; stipulation; R.C. 3119.82.*

In deciding a motion to modify child support, the court ordered that mother as the residential parent would be able to claim the two children as dependents for tax purposes. At the hearing on the motion to modify support, the parties stipulated that each parent would be able to claim a child as a dependent. R.C. 3119.82 provides in part that "[i]f the parties agree on which parent should claim the children as dependents, the court shall designate that parent as the parent who may claim the children." Because R.C. 3119.82 mandates that the court accept the parties' agreement as to claiming children as dependents, the portion of the court's decision permitting mother to claim both children is reversed and the case is remanded for the court to enter an order in accord with the parties' stipulation.

111915	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v TRE'VEON PATTERSON

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; jury instructions;*

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complicity; firearm specifications; abuse of discretion; Reagan Tokes.

Appellant's conviction was not against the manifest weight of the evidence where the victim witness's testimony contained inconsistencies. The trial court did not abuse its discretion in responding affirmatively to a jury question regarding the relevant law on the aggravated robbery charge in the context of complicity. Appellant's indefinite sentence pursuant to the Reagan Tokes Law does not violate his constitutional rights.

111933 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES A. RIDDLE

Affirmed.

Michelle J. Sheehan, P.J., Emanuella D. Groves, J., and Mary J. Boyle, J., concur.

KEY WORDS: R.C. 2929.19(C); consecutive sentences; de novo review.

Defendant was convicted of multiple crimes committed against multiple victims spanning a three-week period. The trial court imposed consecutive sentences, making findings pursuant to R.C. 2929.14(C)(4). Where defendant had a lengthy criminal history, committed multiple serious crimes against multiple victims over a three-week period, and in light of the particular harm caused to some of defendant's victims, the record supports the trial court's consecutive-sentence findings. Pursuant to R.C. 2953.08(G)(2), the appellate court does not clearly and convincingly find that the record does not support the consecutive-sentence findings made by the trial court.

111943 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
SARAH BARRY v CASEY WHITE

Affirmed.

Michael John Ryan, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Dissolution; App.R. 12; App.R. 16; Civ.R. 53, failure to file transcript with trial court; R.C. 3105.18, jurisdiction; separation agreement; magistrate's decision; spousal support; change in circumstances.

The trial court did not abuse its discretion in adopting the magistrate's decision to grant former husband's motion to modify spousal support. The salary stated in the separation agreement was not the salary former husband earned and there was a change in

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circumstances that was supported by the record.

Appellant failed to comply with the appellate rules in several of her assignments of error.

111948 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TYCHON CURRY

Affirmed.

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

KEY WORDS: R.C. 2929.14(C)(4); consecutive-sentence findings; R.C. 2953.08(D)(1); reviewability; jointly recommended sentence; Reagan Tokes Law.

A trial court is not required to make consecutive-sentence findings under R.C. 2929.14(C)(4) for a jointly recommended sentence that is authorized by law and includes nonmandatory consecutive sentences, or to include the findings in the sentencing entry. The sentence is not reviewable under 2953.08(D)(1).

Constitutional challenges to indefinite sentencing provisions of the Reagan Tokes Law are overruled based on the en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

111950 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v REGINALD MEADOWS

Affirmed.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Guilty plea; coercion; trial court's participation; sentencing; dashcam video.

Judgment affirmed. While some of the trial court's comments are concerning and the trial court's participation is not the "preferred practice," we do not look at these comments in isolation, but look at the record in its entirety and find that Meadows's guilty plea was knowingly, intelligently, and voluntarily made. We further find that the dashcam video of Meadows fleeing from the police, crashing into two vehicles, and causing harm to three individuals is reliable evidence that a trial court could consider at the time of sentencing.

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111980 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KARMONE LEE MCCAIN

Affirmed.

Anita Laster Mays, A.J., Mary Eileen Kilbane, J., and Michael John Ryan, J., concur.

KEY WORDS: *Reagan Tokes; constitutionality; severance.*

The trial court imposed an indefinite prison sentence pursuant to the Reagan Tokes Law. Appellant's arguments that the Reagan Tokes Law is unconstitutional and that severance is not an appropriate remedy were overruled in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Appellant's sentence is affirmed.

112112 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C.B., ET AL.

Reversed and remanded.

Eileen A. Gallagher, P.J., and Mary J. Boyle, J., concur; Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: *Permanent custody; termination of parental rights; due process; motion for continuance; Juv.R. 23; Juv.Loc.R. 35(C); abuse of discretion.*

Under the particular facts and circumstances of the case, juvenile court abused its discretion in denying mother's motion for continuance of permanent custody hearing without conducting even a minimal inquiry to determine the facts necessary to evaluate relevant factors prior to ruling on mother's motion for continuance.