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Court of Appeals, Eighth Appellate District

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September 17, 2020

108253 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BEACHWOOD CITY SCHOOL DISTRICT BD. OF EDUCATION v
WARRENSVILLE HEIGHTS CITY SCHOOL DISTRICT

Reversed and remanded.

Mary J. Boyle, P.J.; Sean C. Gallagher, J., concurs with separate concurring opinion; and Anita Laster Mays, J., dissents with separate dissenting opinion.

KEY WORDS: *R.C. 3311.06, Ohio Adm.Code Chapter 3301-89, contracts between school districts to share tax revenue but not transfer territory, R.C. 5705.41, R.C. 5705.412, fiscal certificates regarding expenditures of public funds.*

The agreements between the school districts are valid and enforceable even though the Ohio Board of Education did not approve them because the agreements did not involve the actual transfer of territory from one school district to another. The agreements did not need to include fiscal certificates because the agreements were not for the expenditure of funds.

108609 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDWIN REYES-FIGUEROA

Affirmed.

Kathleen Ann Keough, J., Frank D. Celebrezze, Jr., P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Aggravated murder; prior calculation and design; self-defense; jury instruction; reasonable force; jury nullification; effective assistance of counsel.*

Trial court did not abuse its discretion in refusing to instruct the jury on self-defense because the defendant did not produce evidence that tends to show that the use of deadly force was reasonable force. Trial counsel was not ineffective in asking for jury nullification because it was a matter of trial strategy when his self-defense argument was barred. The evidence supported defendant's convictions that he acted with prior calculation and design because he knew the victim, their relationship was strained, he chose the murder site and weapon, and the murder was arguably drawn out. Defendant's actions prior, during, and following the murder demonstrated that the jury did not lose its way in finding him guilty of aggravated murder.

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108624	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v LOWELL HARRIS			

Affirmed.

Michelle J. Sheehan, J., Eileen T. Gallagher, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Murder; Evid.R. 701; abuse of discretion; opinion testimony; lay witness; sufficient evidence; manifest weight.*

The trial court did not abuse its discretion in permitting the detective to testify regarding the bullet's trajectory where the detective testified as a lay witness to an opinion based on his experience as a police officer, his perception of the evidence, and his personal observations during an investigation, and the detective's testimony was helpful to determine facts in issue.

Appellant's convictions were supported by sufficient evidence where the medical examiner concluded the manner of death was homicide and ruled out suicide and accidental death based upon the absence of fouling and presence of stippling, the muzzle-to-target distance, the location of the injuries sustained by the victim, the bullet's trajectory, and the absence of a gun near the body or the crime scene. The convictions were not against the manifest weight of the evidence.

108800	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v C.W.D., JR.			

Affirmed.

Mary Eileen Kilbane, J., and Raymond C. Headen, J., concur; Patricia Ann Blackmon, P.J., concurs in judgment only with separate opinion.

KEY WORDS: *R.C. 2953.31(A)(1)(a) and (b); eligible offender; sealed records; offense of violence; App.R. 16(A)(7).*

We affirmed the decision of the trial court to deny appellant's application to seal his records. Appellant had a misdemeanor conviction for a crime of violence and eight total convictions. As a result, he was not eligible for sealing under R.C. 2953.31(A)(1) subsection (a) or (b).

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108998	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICHARD RODRIGUEZ, SR.			

Affirmed.

Patricia Ann Blackmon, P.J., Raymond C. Headen, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Guilty plea; consecutive sentences; penal institution.*

The trial court did not err in accepting a guilty plea to murder and other offenses where the court properly set forth the nature of the offenses; consecutive sentences were imposed in compliance with R.C. 2929.14(C) and were supported by the record; the court's recommendation regarding the place of imprisonment was not prejudicial error.

109007	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVEION BROWN			

Affirmed in part; vacated in part; remanded.

Eileen A. Gallagher, J.; Mary J. Boyle, P.J., concurs in judgment only, and Larry A. Jones, Sr., J., concurs in part and dissents in part (with separate opinion attached).

KEY WORDS: *Crim.R. 11(C)(2)(a); knowing, intelligent, and voluntary guilty pleas; sex offender classification; complete failure to comply; postrelease control; prejudice; court costs; R.C. 2947.23(A)(1)(a); ability to pay; R.C. 2929.19(B)(5); fines; R.C. 2929.18; jail-time credit; R.C. 2929.19(B)(2); R.C. 2929.14(C)(4); findings in support of consecutive sentences; nunc pro tunc entry.*

Where trial court did not even mention sex offender classification until after it accepted defendant's guilty plea, trial court completely failed to comply with Crim.R. 11(C)(2)(a) on that issue and defendant was not required to show prejudice to vacate his guilty plea to rape count.

Even assuming trial court did not fully or substantially comply with Crim.R. 11(C)(2)(a) as it related to postrelease control, where trial court provided some explanation of postrelease control, defendant was not entitled to have his guilty pleas to robbery counts vacated where he made no showing of prejudice.

Trial court was not required to consider defendant's ability to pay in ordering payment of court costs. Trial court did not abuse its discretion in ordering defendant to pay court costs where defendant never objected to or moved to waive, suspend, or modify payment of court costs. Record reflected that trial court considered defendant's present and future ability to pay prior to imposing fines.

Trial court failed to award defendant jail-time credit at the

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sentencing hearing or in the sentencing journal entry; remanded for calculation of amount of jail-time credit to which defendant is entitled.

Imposition of consecutive sentences on robbery counts was not clearly and convincingly unsupported by the record. Although trial court made all of the requisite findings for the imposition of consecutive sentences at the sentencing hearing, it failed to incorporate all of those findings in its sentencing journal entry. Remanded for issuance of nunc pro order incorporating all of the findings trial court made in support of consecutive sentences at the sentencing hearing in its sentencing journal entry.

109082	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CHRISTIE L. ELKO			

Reversed and remanded.

Anita Laster Mays, J., and Patricia Ann Blackmon, P.J., concur; Raymond C. Headen, J., concurs with separate opinion.

KEY WORDS: R.C. 2921.33(A), resisting arrest, jury instruction, excessive force, unlawful arrest.

Appellant was entitled to a jury instruction that an arresting officer's use of excessive force during a lawful or unlawful arrest is a complete defense to a charge of resisting arrest. An officer's use of excessive force renders the arrest unlawful.

109091	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JAVON WILLIAMS			

Affirmed.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Raymond C. Headen, J., concur.

KEY WORDS: Crim.R. 11(C)(2); knowing, intelligent, and voluntary guilty pleas; judicial release; nunc pro tunc entry; R.C. 2953.08(D)(1); jointly recommended sentence; authorized by law; sentencing range agreement; unreviewable sentences; R.C. 2929.14(C)(4); findings for imposition of consecutive sentences.

Trial court was not required to explain judicial release or inform defendant regarding his ineligibility for judicial release to comply with Crim.R. 11(C)(2). Record showed that defendant was informed and understood that if he were to accept the plea agreement offered by the state, he would not be eligible for judicial release.

Trial court did not err in entering a nunc pro tunc entry indicating

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that defendant was not eligible for judicial release where defendant's ineligibility for judicial release was a term of the plea agreement and the trial court expressly acknowledged that defendant was not eligible for judicial release at the sentencing hearing but inadvertently omitted defendant's ineligibility for judicial release from its original sentencing journal entry.

Defendant's sentences, imposed in accordance with a plea agreement that included a jointly recommended aggregate sentencing range, were not subject to appellate review under R.C. 2953.08(D)(1). Trial court was permitted to impose nonmandatory consecutive sentences within the agreed sentencing range even without making all of the findings that would otherwise be required for the imposition of consecutive sentences under R.C. 2929.14(C)(4).

109122 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AMIRAH SULTAANA v BARKIA ENTERPRISE INC.

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Extension; deadlines; abuse of discretion; summary judgment; products liability; negligence; food poisoning; proximate cause.*

The trial court did not abuse its discretion in denying plaintiff's request for a second extension of time. The trial court did not err in granting summary judgment in favor of plaintiff's claims for products liability and negligence because plaintiff failed to produce medical evidence to demonstrate the existence of a genuine issue of material fact that defendant's food product proximately caused her symptoms or that she suffered from food poisoning.

109144 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CLEVELAND ELECTRIC ILLUMINATING COMPANY v CITY OF CLEVELAND

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Summary judgment, negligence, genuine issue of material fact, political-subdivision immunity, R.C. 2744.02(B)(2), circumstantial evidence.*

The city of Cleveland is not entitled to summary judgment based on political-subdivision immunity for the plaintiff's tort claim. A genuine dispute of material fact exists as to whether the city

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breached its duty to CEI and whether the city's excavation work damaged the plaintiff's electrical duct and cable. There is thus a dispute as to whether the city negligently performed a proprietary function.

109159 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV, DOM OR PRO
STATE OF OHIO v GREGORY ROBINSON

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Petition for postconviction relief; R.C. 2953.21(A)(2); R.C. 2953.23(A)(1)(a); subject matter jurisdiction.*

The trial court did not err in denying Robinson's untimely and successive petition for postconviction relief. Robinson's argument that the trial court lacked subject matter jurisdiction over his case because no complaint was filed against him lacks merit because the record contains an indictment against him.

109518 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE P.B., ET AL.

109519 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE K.B.

Affirmed.

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

KEY WORDS: *Motion for permanent custody; independent or separate counsel; recommendation of guardian ad litem; Juv.R. 4; R.C. 2151.352; certain circumstances; R.C. 2151.414(B)(1); best interest of the child; manifest weight of the evidence; clear and convincing evidence; R.C. 2151.414(D)(1); R.C. 2151.414(D)(2); substantial compliance with case plan; wishes of the child.*

Juvenile court did not err in failing to appoint independent or separate counsel for the children in a permanent custody proceeding where the record did not show that the children consistently and repeatedly expressed a desire for placement that was inconsistent with the recommendation of the guardian ad litem. Competent, credible, clear and convincing evidence supported the juvenile court's findings under R.C. 2151.414(D)(2)(a)-(d), mandating a determination that permanent custody was in the children's best interest. Juvenile court did not abuse its discretion in relying on children's wishes as the "single most important factor" and determining that granting permanent custody to CCDCFS was in

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children's best interest under R.C. 2151.414(D(1)). Competent, credible, clear and convincing evidence supported the juvenile court's finding that the children did not want to be reunified with their mother. Mother's substantial compliance with case plan did not preclude a grant of permanent custody to CCDCFS.

109586	PROBATE COURT DIVISION	F	CIVIL C.P.-JUV, DOM, PROBATE
IN RE GUARDIANSHIP OF DONALD SIMAN			

Vacated.

Patricia Ann Blackmon, J.; Mary J. Boyle, P.J., concurs; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: Guardianship; final accounting; probate court jurisdiction; motion to compel return of funds.

Probate court was without jurisdiction to grant a former guardian's motion to compel return of guardianship funds subsequent to the ward's death. Continuing jurisdiction was limited to consideration and settlement of the final accounting, which was not filed in this case. Guardians can submit final accountings of guardianship funds without having possession of all of the guardianship assets.