

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 26, 2018

103035 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDREW L. JACKSON

Affirmed.

Larry A. Jones, Sr., J., and Kathleen Ann Keough, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Motion to disqualify counsel; jury instructions; Crim.R. 52(B)/plain error; Crim.R. 29(A)/motion for acquittal; sufficiency; ineffective assistance of counsel.*

Appellant failed to articulate a valid basis for removing his court-appointed counsel. The trial court did not err in denying appellant's motion.

The weapons recovered were found to be deadly weapons. Under a plain error review, the trial court did not err in giving a deadly weapon instruction to the jury.

The presentation of guns during the robbery created such a fear in the victims that they relinquished their personal property against their will. Sufficient evidence was presented to prove all the elements of the charges against appellant. The trial court did not err in denying appellant's motion for acquittal.

Appellant's trial counsel's performance did not fall below the standard for reasonable representation and his representation, therefore, was not ineffective.

103494 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEANDRE GORDON

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Aggravated robbery; kidnapping; felonious assault; relevant testimony; merger; manifest weight; ineffective assistance of counsel.*

Judgment affirmed. Testimony regarding fear of gang reprisal was testimony that was relevant and admissible. The felonious assault, aggravated robbery, and kidnapping did not merge. The crimes were committed with a separate animus. The jury heard the evidence and found the victim's testimony credible. Therefore, the convictions are not against the manifest weight of the evidence. Defense counsel was not ineffective for failing to object to certain testimony because such testimony was admissible.

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105411 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN M. HAUSER

Affirmed; vacated.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Sentence; costs; merger; limited nature of remand; findings; consecutive; R.C. 2929.14; R.C. 2953.08; Judgment affirmed.*

The trial court granted defendant's motion to vacate any costs prior to the release of our decision in Hauser I. Therefore, the imposition of costs was not at issue at the time of the December 2016 hearing. The June 20, 2016 entry granting defendant's motion to vacate all court costs is valid and in effect. Any reference to the defendant owing costs is vacated from the January 3, 2017 journal entry and the January 4, 2017 entry. The proper remedy for correcting an error during imposition of consecutive service is a limited remand for the purpose of determining whether consecutive sentences should be imposed, not a de novo sentencing hearing where any issue regarding sentencing could be reviewed. Therefore, the trial court in the instant matter was limited to addressing the consecutive sentence, and could not address merger. Lastly, the record clearly supports the trial court's findings under R.C. 2929.14(C)(4), and its imposition of the consecutive sentence was proper.

105562 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v IALIE N. ROBERTSON

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Gross sexual imposition; R.C. 2907.05(A)(1); kidnapping; R.C. 2905.01(A)(4); ineffective assistance of counsel; allied offenses of similar import; manifest weight of the evidence.*

The trial court erred when it did not merge defendant's kidnapping and gross sexual imposition offenses because they were allied offenses of similar import. The defendant did not inflict additional harm when he held the victim down for a few minutes to commit gross sexual imposition. But defendant's arguments regarding ineffective assistance of counsel and manifest weight of the evidence were overruled.

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105622 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ISAIAH CAMPBELL

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *R.C. 2971.01(H)(1)/sexually violent predator; hearsay; sufficiency; manifest weight; ineffective assistance of counsel.*

Appellant's hearing for determination of appellant as a sexually violent predator was tried to the bench, and under a plain error review, the trial court is presumed to have considered only the relevant material and competent evidence to determine judgment. Appellant failed to overcome that presumption.

Sufficient evidence was provided to the court and appellant's conviction as a sexually violent predator is not against the manifest weight of the evidence.

Appellant's propensity for violence was shown where he committed an unrelated violent offense after the offense in this case; the trial court had before it the necessary, relevant information to determine appellant's "likely to engage in the future" acts of sexual violence. Appellant was not denied due process.

Appellant has failed to show that, but for his attorney not doing the things appellant thought counsel should have done, appellant would not have been determined to be a sexually violent predator. Appellant's counsel's performance did not meet the standard of ineffective assistance.

Appellant's rape conviction was not against the manifest weight of the evidence. The jury was in the best position to weigh the witnesses' testimony and review the evidence.

105643 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM BOWEN v FARMERS INSURANCE COMPANY, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., Tim McCormack, J., concur.

KEY WORDS: *Class certification; Civ.R. 23; fraud; statute of limitations; discovery rule; identifiable class; predominance; uninsured motorist coverage.*

The trial court conducted the requisite rigorous analysis in determining whether appellee satisfied the Civ.R. 23 prerequisites for class certification, and the trial court did not abuse its discretion in certifying the class.

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105689 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT N. HUNT

Affirmed.

Patricia Ann Blackmon, J.; Eileen T. Gallagher, P.J., concurs with majority opinion and concurs with separate concurring opinion; Melody J. Stewart, J., concurs with attached separate concurring opinion.

KEY WORDS: *Ineffective assistance of counsel; prosecutorial misconduct; cumulative errors.*

Defendant's convictions for gross sexual imposition, kidnapping, and burglary affirmed. Counsel's failure to object was not ineffective, because defendant failed to show he was prejudiced by counsel's performance. Likewise, there was no prosecutorial misconduct during closing arguments, because defendant failed to show prejudice. Jury acquitted defendant of rape, but found him guilty of related offenses based on victim's testimony. Cumulative error argument fails, because there is no evidence of any — let alone multiple — errors.

105699 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
VIOREL MURGU, ET AL. v LAKEWOOD CITY SCHOOL DISTRICT, BD. OF EDUCATION

Dismissed.

Anita Laster Mays, J., and Mary J. Boyle, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Political subdivision immunity defense, affirmative defense.*

The trial court did not abuse its discretion in denying the appellant from presenting a political subdivision immunity defense in summary judgment proceedings. The trial court did not deny the appellant's ability to assert the affirmative defense at trial.

105743 SHAKER HTS. MUNI. C CRIMINAL MUNI. & CITY
CITY OF BEACHWOOD v JUSTIN PEARL

Affirmed in part; vacated in part; and remanded.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

KEY WORDS: *Cruelty to companion animals; Fifth Amendment; self-incrimination; expert testimony; sufficiency; manifest weight; plain error; Crim.R. 52; Crim.R. 29; Evid.R. 701.*

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(Case 105743 continued)

Appellant was not prejudicially misled regarding the offense with which he was charged and convicted as a result of the clerical error in the complaint. Appellant's constitutional right to remain silent and privilege against self-incrimination were not violated. The trial court did not arbitrarily disregard the testimony of the defense's expert witness. Appellant's conviction for cruelty to companion animals is supported by sufficient evidence and not against the manifest weight of the evidence. The trial court's imposition of inactive probation in its sentencing judgment entry is vacated because the trial court did not sentence appellant to probation in open court during the sentencing hearing. This matter is remanded to the trial court for the limited purpose of issuing nunc pro tunc journal entries to accurately reflect the offense with which appellant was charged and convicted.

105885 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JONATHAN MAGWOOD

Affirmed in part, reversed in part.

Tim McCormack, J., Eileen A. Gallagher, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Rape; manifest weight; credibility; sexual assault nurse examiner; hearsay; Evid.R. 803(4); maximum and consecutive sentence; R.C. 2929.11 and 2929.12; R.C. 2953.08(G)(2); R.C. 2929.14(C)(4); supported by the record.*

The conviction for rape was not against the manifest weight of the evidence. The factfinder found the victim more credible and the victim's testimony was supported by other witness testimony. The sexual assault nurse examiner's reading of the victim's narrative regarding the theft of the victim's money was not protected by the hearsay exception of Evid.R. 803(4), and because this narrative was the only evidence of the theft, admission of this testimony amounted to plain error and Magwood's conviction for petty theft must be reversed. Magwood's maximum sentence was supported by the record. The sentence was within the statutory range, and the court considered R.C. 2929.11 and 2929.12. Additionally, we cannot clearly and convincingly find that the record does not support consecutive sentences.

105919 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EMMANUEL JACKSON

Affirmed.

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

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(Case 105919 continued)

KEY WORDS: Plea agreement; compulsory process; material; favorable.

Where the defendant's codefendants entered into plea agreements that improperly precluded them from testifying for the defense, defendant's conviction was affirmed and the violation of defendant's right to compulsory process held to be harmless where the defendant did not make the required showing that the codefendants' testimony would have been material and favorable to his defense.

105946 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v RYAN SOWDERS

Affirmed.

Melody J. Stewart, J., and Eileen A. Gallagher, A.J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: *Manifest weight; assault; reasonable force.*

Trial court did not lose its way by finding that body camera video of police officer striking a subdued and handcuffed suspect depicted an unreasonable amount of force that constituted an assault.

105983 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DWJUAM A. PARHAM

Affirmed.

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

KEY WORDS: *Ineffective assistance; object; hostile; judicial bias; plea; Crim.R. 11; nature of offense; elements; substantial compliance; nonconstitutional; recommended sentence; record; knowing; voluntary; intelligent.*

The record demonstrates that defendant subjectively understood the nature of the felonious assault offense. The trial court substantially complied with the requirements of Crim.R. 11(C)(2)(a). Defendant failed to demonstrate that counsel rendered ineffective assistance of counsel during the plea hearing. The record does not demonstrate that the parties agreed to a jointly recommended sentence. Thus the trial court had no obligation to forewarn defendant that it would not be bound by a jointly recommended sentence.

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106084 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANTHONY THOMAS, ET AL. v PSC METAL, INC., ET AL.

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment, negligence, workers' compensation immunity, R.C. 4123.74, R.C. 4123.35, loss of consortium.*

The trial court properly granted summary judgment to the employer because it complied with the relevant workers' compensation statutes and, therefore, was immune to the plaintiff's negligence claim. The trial court properly granted summary judgment to the employer as to the plaintiffs' claim for loss of consortium because that claim was dependent upon the plaintiffs' underlying claims, which were dismissed on summary judgment.

106120 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RON RHODES

Affirmed.

Anita Laster Mays, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Sufficient evidence, R.C. 2905.01(A)(3), manifest weight of the evidence.*

There was sufficient evidence to convict the appellant of kidnapping in violation of R.C. 2905.01(A)(3) because he restrained the victim's liberty in order to inflict serious physical harm on her. In reviewing the record, it has not been demonstrated that the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. The appellant's convictions were not against the manifest weight of the evidence.

106129 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MATHEW R. STRIMPEL

Affirmed.

Tim McCormack, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Guilty plea; Crim.R. 11; group plea; psychological evaluation; mental health appeal; jurisdiction; motion to withdraw guilty plea.*

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(Case 106129 continued)

Appellant's group guilty plea was knowingly, intelligently, and voluntarily made. There is nothing in the record indicating the group plea dynamic interfered with his plea. Also, the fact that the court ordered a psychological evaluation for mitigation in sentencing does not establish that the appellant had mental health issues that prevented his plea from being knowingly, intelligently, and voluntarily made, where the record of the proceeding lacks any evidence that appellant suffered from a mental condition.

106137 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVONTAY CLIFF

Affirmed.

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

KEY WORDS: Substantial compliance; mandatory; sentence; firearm specification; Crim.R. 11; understood; ineligible; community control; totality of circumstances.

The trial court substantially complied with the requirements of Crim.R. 11(C)(2)(a) by ensuring that defendant subjectively understood the mandatory nature of the prison sentence associated with a firearm specification.

106185 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
CHARLES JAMISON, ET AL. v CAROLINE H. JAMISON, ET AL.

Affirmed.

Kathleen Ann Keough, J., Sean C. Gallagher, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Constructive trust; unjust enrichment; separation agreement; dissolution decree.

Trial court properly granted appellees' motion for summary judgment, imposed a constructive trust over the property at issue, and removed it from the decedent's estate where the decedent and his ex-wife had agreed in a separation agreement that was incorporated into a dissolution decree that he would put the property into a trust for the benefit of his ex-wife, children, and grandchildren, regardless of any remarriage. Despite the decedent's failure to transfer the property into the trust during his lifetime, the property was not an estate asset and the surviving spouse would have been unjustly enriched if it were included in the decedent's estate.

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106447	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ELIZABETH A. SCOTT			

Affirmed.

Mary Eileen Kilbane, J., Eileen A. Gallagher, A.J., and Tim McCormack, J., concur.

KEY WORDS: *R.C. 2953.08(G); R.C. 2929.14(C); consecutive sentence.*

The trial court made the three required findings under R.C. 2929.14(C) to warrant its imposition of consecutive sentences for defendant-appellant's convictions for involuntary manslaughter and aggravated arson. The trial court went above and beyond the statutory requirements of R.C. 2929.14(C) as explained by the Ohio Supreme Court in State v. Bonnell, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659. The trial court reiterated these findings in the sentencing journal entry.