

CASE DECISION LIST

August 2, 2018

105862 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RONALD J. REED

Affirmed.

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

KEY WORDS: *Crim.R. 11(C); guilty plea; ineffective assistance of counsel.*

Defendant-appellant's convictions for attempted felonious assault, abduction, and domestic violence affirmed. Defendant's argument that his plea was not knowingly, intelligently, and voluntarily made was unpersuasive. The trial court substantially complied with the requirement under Crim.R. 11(C)(2)(a) to determine that the defendant is voluntarily making his plea with understanding of the nature of the charges and of the maximum penalty involved. The trial court was not required under Crim.R. 11 to determine that the defendant understood the merger doctrine. Defendant's ineffective assistance claim was unpersuasive because defendant failed to establish that defense counsel's performance fell below an objective standard of reasonable representation that caused his guilty plea to be less than knowing, intelligent, and voluntary.

105992 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HOWARD LESTER

Affirmed.

Mary Eileen Kilbane, P.J., Melody J. Stewart, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Sufficiency of the evidence; accomplice liability; manifest weight of the evidence; fruit of unconstitutional seizure; confrontation clause; ineffective assistance of counsel.*

Judgment affirmed. The state presented sufficient evidence to convict defendant on accomplice liability grounds even though codefendants were not convicted of same crimes because it is not required that the person with whom the accused was in complicity with has to be convicted as a principal offender. Defendant's convictions are not against the manifest weight of the evidence. Defense counsel was not ineffective for not moving to suppress the gun because defendant was not under arrest at the time the officer discovered the gun. Defendant was not denied his right to confrontation when defense counsel did not object to expert's testimony, which was based on test results performed by someone else. Out-of-court statements that are related by the expert solely for the purpose of explaining the assumptions on which that opinion rests are not offered for their truth and, thus, fall outside the scope of the Confrontation Clause.

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106046 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CRYSTAL DEAN v LIBERTY MUTUAL INSURANCE, ET AL.

Reversed in part, affirmed in part and remanded.

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

KEY WORDS: *Summary judgment; race discrimination; promissory estoppel; overtime hours; discovery motions.*

Trial court erred by granting summary judgment to defendant-employer regarding employee's race discrimination claim, because there are genuine issues of material fact. Summary judgment was properly granted to employer regarding employee's promissory estoppel and violation of Minimum Fair Wage Standards Act claims. Court did not abuse its discretion in denying plaintiff's motion to compel discovery.

106055 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARDELL HOUSTON

106470 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARDELL D. HOUSTON

Affirmed in part; remanded for sentencing.

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

KEY WORDS: *Murder, manifest weight, ineffective assistance of counsel, confrontation clause, mandatory consecutive sentence.*

Appellant's conviction for murder was not against the manifest weight of the evidence. Alleged tactical errors by this trial counsel did not amount to ineffective assistance of counsel because he suffered no prejudice. The trial court erred at sentencing where the record reflected that the court was operating under the incorrect belief that it was statutorily required to order appellant's conviction for attempted failure to comply to be served consecutively to his other sentences.

106071 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.R.-B.

Affirmed.

Mary Eileen Kilbane, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. 2151.414; permanent custody; clear and convincing; child's wishes; best interest; relevant factors; guardian ad litem; waive; plain error.*

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Judgment affirmed. The trial court's decision awarding permanent custody of the child to CCDCFS and terminating parental rights was proper. The trial court considered all relevant factors and its best-interest determination was supported by clear and convincing evidence. While the child expressed desire to remain with Mother, the juvenile court is charged with the grave responsibility of determining the children's best interest, and this is not solely limited to the children's stated wishes. The record demonstrates Mother has a chronic mental illness and chemical dependency. Mother is repeatedly incarcerated. Mother and Father have neglected the child. Mother and Father are unwilling to provide food, clothing, shelter, or other necessities for the child. Moreover, the court did not err in not sua sponte appointing her a GAL when there is nothing in the record to suggest that Mother is mentally incompetent. A mental impairment does not necessarily mean that the adult is mentally incompetent, requiring the appointment of a GAL. Additionally, Mother never objected to a lack of assistance from a guardian at any time during the proceedings. This court has previously found the failure to object to the lack of assistance from a GAL waived the issue on appeal.

106147 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SAMI SOSNOSWSKY v JOHN P. KOSCIANSKI, ET AL.

Reversed and remanded.

Larry A. Jones, Sr., J., Melody J. Stewart, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *On reconsideration; R.C. 2101.24/probate court jurisdiction; Civ.R. 12(B)(1)/dismissal/subject matter jurisdiction; jurisdictional-priority rule.*

Jurisdiction in this matter was proper in the general division of the common pleas court; it was error for the trial court to dismiss appellant's complaint for lack of subject matter jurisdiction.

106193 COMMON PLEAS COURT A CRIMINAL C.P.
IN RE: GRAND JURY SUBPOENA FOR DAUNTE BYRD

Affirmed.

Anita Laster Mays, J., Tim McCormack, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Grand jury subpoena, exception to mootness doctrine, Crim.R. 17, R.C. 2939.12.*

Appellant's motion to quash a grand jury subpoena was properly declared to be moot because the subpoena had already been executed and the relief requested by appellant had been granted and implemented. Appellant could not meet both prongs of the test

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for an exception to the mootness doctrine.

106211	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICARDO YOUNG			

Affirmed.

Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Search and seizure, manifest weight of the evidence, inconsistent verdicts, disproportionate sentences, merger, firearm specification, weapon while under disability.*

The officers had probable cause to stop appellant's vehicle for committing a traffic offense and to search the vehicle after observing drugs and guns in plain view and the verdict was not against the manifest weight of the evidence. The exoneration of appellant's codefendant did not constitute an inconsistent verdict. Sentences between two codefendants are not disproportionate where one defendant is determined to be not guilty. A firearm specification and the charge of having a weapon while under disability are not allied offenses.

106215	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID D. AUSTIN			

106530	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID D. AUSTIN			

Affirmed in part; reversed in part.

Kathleen Ann Keough, J., and Eileen A. Gallagher, A.J., concur; Eileen T. Gallagher, J., concurs (with separate concurring opinion).

KEY WORDS: *Child endangering; R.C. 2919.22(A); sufficiency of evidence; manifest weight of evidence; flight instruction; consecutive sentences.*

Defendant's conviction for child endangering in violation of R.C. 2919.22(A) was supported by sufficient evidence and not against the manifest weight of the evidence where, even if the jury found that the defendant did not cause the child's life-threatening injuries, the jury could have reasonably found that the defendant failed to protect the child from such injuries sustained while in his care; trial court's flight instruction, although improper, was not prejudicial error; trial court erred in denying defendant's motion for a new trial because the trial court had no jurisdiction to rule on the motion while defendant's appeal was pending; trial court made the necessary findings to impose consecutive sentences.

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106225 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v FRANK L. HERRINGTON

Affirmed.

Kathleen Ann Keough, J., Melody J. Stewart, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Preindictment delay, actual prejudice, speculation, manifest weight, DNA evidence, credibility, effective assistance of counsel, independent expert, consecutive sentences, moot.*

Defendant failed to demonstrate actual prejudice in his motion to dismiss for preindictment delay because he only presented speculative reasoning. Defendant's convictions were not against the manifest weight of the evidence because DNA evidence linked the defendant to the victim, and weighing the evidence and evaluating credibility rests with the trier of fact. Counsel was not ineffective for failing to consult with or obtain an independent expert to evaluate the DNA evidence. Counsel's decision to instead employ rigorous cross-examination of the state's expert may have been tactical. Defendant's consecutive sentence challenge is moot because the sentence was ordered consecutive to the life-without-parole sentence he was already serving.

106283 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ARION D. ANDREWS

Affirmed.

Mary Eileen Kilbane, P.J, Tim McCormack, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion to suppress; probable cause; sufficiency of evidence; manifest weight of the evidence; felonious assault; ineffective assistance of counsel; failure to support argument with reference in record; judgment affirmed.*

Denial of the motion to suppress was proper. Affidavit supporting the search warrant did not lack probable cause when the officer averred he learned that the defendant's residence was located at 1386 Russell Road, and that this residence had been shot into earlier on the same day. The defendant's mother was inside the house at the time of the shooting and suffered a gunshot wound. The officer further stated that surveillance video depicted the shooters fleeing from the crime scene, on foot, and towards the direction of the defendant's residence. Witnesses at the scene of the shooting reported to police that the defendant was seen in the area at the time of the shooting. The officer also stated that the defendant's DNA was found on all of the 13 shell casings collected at the scene that were associated with the automatic rifle. There is sufficient evidence to sustain the convictions, and the convictions are not against the manifest weight of the evidence because the state presented evidence that the victim's vehicle was shot at during the course of the shooting spree. The bullet that struck the

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victim's car nearly hit the victim. When the group opened fire, it was foreseeable that a bullet might strike a bystander or a bystander's vehicle that was near the housing complex and cause or attempt to cause physical harm. Furthermore, the defendant stated to the police that he loaded the ammunition clip for his friends because they were going "to ride for him," which he took to mean that they are going to get the guy who shot his mother. Defendant's ineffective assistance of counsel claim is unpersuasive because defendant concedes that defense counsel properly preserved all issues at trial, but then does not specify which issue trial counsel failed to properly preserve. It is not this court's duty to root out an argument, if it exists, that can support an assignment of error.

106304 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHERMAN ANDERSON

Reversed and indictment dismissed.

Melody J. Stewart, P.J., and Kathleen Ann Keough, J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: *Final order; provisional remedy; R.C. 2505.02(B)(4); motion to dismiss indictment; guilty plea.*

Defendant pleaded guilty to attempted murder and years later the state charged him with murder after the victim died. Applying State v. Anderson, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, an order denying a motion to dismiss the murder indictment was a final order under R.C. 2505.02(B)(4) because it was made in an ancillary proceeding, it determined the action with respect to a second prosecution, and the defendant would be denied the right to an effective remedy on appeal if forced to endure an additional trial when legal precedent barred a retrial.

A defendant's expectation that a guilty plea will bar the state from bringing additional charges is founded on the state's failure to specifically reserve the right to bring additional charges at the time of the guilty plea.

106333 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v AMIR S. RUBIN

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Crim.R. 29(A), sufficiency, pandering, R.C. 2907.322, illegal use of a minor in nudity-oriented material or performance, R.C. 2907.323, possessing criminal tools, manifest weight of the evidence, consecutive sentences, sentencing factors, R.C. 2929.11,*

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R.C. 2929.12, plain error.

The appellant's convictions under R.C. 2907.322 were supported by sufficient evidence and were not against the manifest weight of the evidence. The record supported the trial court's imposition of consecutive sentences, and the trial court properly considered the purposes and principles of felony sentencing as well as the factors listed in R.C. 2929.12. The trial court did not commit plain error by failing to instruct the jury that it had to find that the images found on the appellant's computer depicted real, not virtual children.

106372 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANTHONY J. GRADY v KARVO, INC., ET AL.

Affirmed.

Melody J. Stewart, P.J., Mary J. Boyle, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Summary judgment; factual dispute.

A court properly grants defendants' motions for summary judgment after defendants satisfy initial burden of showing entitlement to judgment and plaintiff fails to demonstrate any issue of material fact. Res ipsa loquitur does not apply when instrumentality alleged to have caused injury is not under the exclusive management and control of defendants.

106461 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UBS FINANCIAL SERVICES, INC. v ALBERT V. LACAVA, JR., ET AL.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Fraudulent transfer, R.C. 1336.08, R.C. 1336.01, summary judgment, R.C. 1336.04.

The trial court's order granting summary judgment was proper because the appellant did not give "reasonably equivalent value" to the transferor and the transfer was not made in good faith.

106505 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KELVON MADDOX

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106506 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KELVON MADDOX

Affirmed.

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

KEY WORDS: *Crim.R. 11, maximum penalty, substantial compliance, consecutive firearm specifications, consecutive sentences, R.C. 2929.14, proportionality.*

The trial court substantially complied with the mandates of Crim.R. 11(C) because the trial court told the appellant that he could serve the firearm specifications consecutive to one another, and the state informed the court that it believed that the firearm specifications had to be served consecutively. The trial court considered the seriousness of the appellant's conduct as well as the appellant's lengthy criminal history and, therefore, made the requisite findings to impose consecutive sentences.

106641 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.A.T., ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Application for custody; best interest; R.C. 3109.04(F); R.C. 3109.042.*

The juvenile court did not abuse its discretion by denying Father's application for custody of his two minor children, allowing Mother to retain custody of the children. The trial court ordered a visitation schedule for Father. The court considered all the required factors under R.C. 3109.04(F)(1) in designating Mother as the children's sole residential parent and legal custodian. The record did not demonstrate that the court ruled with a presumption in favor of Mother.

106732 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v KAREN GLAROS

Reversed and remanded.

Mary Eileen Kilbane, P.J., Melody J. Stewart, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Insufficient evidence; C.C.O. 435.05(a)(1); wrongful entrustment.*

Judgment is reversed and remanded. Defendant-appellant's

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conviction for wrongful entrustment of a motor vehicle, a violation of C.C.O. 435.05(a)(1), is reversed and remanded to the trial court with instructions to vacate the conviction. The City did not prove that the defendant permitted another to drive her vehicle or that she knew or had reason to know that the driver of her vehicle did not have a valid driver's license.