

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 16, 2018

105673 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID HART

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, P.J.; Melody J. Stewart, J., concurs in judgment only; Sean C. Gallagher, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Preindictment delay; due process; faded memories; deceased witnesses; unavailable; other acts evidence; Evid.R. 404(B); unfair prejudice.*

Trial court properly denied defendant's motion dismiss for preindictment delay where defendant failed to establish actual prejudice caused by the delay.

Trial court's decision to allow evidence of defendant's prior sex crime into evidence was an abuse of discretion that resulted in unfair prejudice in violation of Evid.R. 404(B).

105964 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BASIM BARNES

Reversed and remanded.

Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur; Eileen T. Gallagher, P.J., dissents with separate opinion.

KEY WORDS: *R.C. 2505.02, final appealable order, R.C. 2505.02(B)(4), provisional remedy, motion to withdraw, office of the public defender, Prof.Cond.R. 1.7, conflict of interest, Prof.Cond.R. 1.9, duty of confidentiality.*

The motion to withdraw due to conflict of interest and duty of confidentiality is a final appealable order. The elements of a provisional remedy have been met. The office of the public defender is a firm pursuant to the Professional Rules of Conduct. Because the office of the public defender represented a former client who is the alleged victim in the instant case, issues of confidentiality and conflicts of interest arose, resulting in whether counsel would zealously represent the defendant. The defendant would not be afforded a meaningful and effective remedy after trial by way of appeal.

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106140 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
HEBA EL ATTAR, ET AL. v MARINE TOWERS EAST CONDOMINIUM OWNERS' ASSN., ET AL.

Reversed and remanded.

Melody J. Stewart, J., and Mary Eileen Kilbane, P.J., concur; Larry A. Jones, Sr., J., concurs in judgment only.

KEY WORDS: *Judgment on the pleadings; condominium declaration and bylaws; reserve fund.*

Trial court erred by granting judgment on the pleadings where the evidence showed condominium association failed to “build up and maintain a reasonable reserve” as required by its bylaws.

106231 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.W.

Reversed and vacated.

Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concur; Eileen T. Gallagher, P.J., dissents with separate opinion.

KEY WORDS: *Evid.R. 807; delinquency; independent proof; Evid.R. 702; bootstrapping rule; R.C. 2905.01; R.C. 2907.05; R.C. 2907.02; sufficiency of the evidence; force; restraint; implied force; gross sexual imposition; lesser included offense.*

The state failed to present independent proof of the sexual act under Evid.R. 807 for the purposes of admitting the incompetent victim’s testimony at trial, and the state failed to present sufficient evidence of force or restraint for the purposes of the rape and kidnapping convictions. In this case, gross sexual imposition was improperly considered as the lesser included offense of the statutory rape count with which the juvenile was charged.

106260 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UBS FINANCIAL SERVICES, INC. v ALBERT LACAVA

Affirmed.

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

KEY WORDS: *Fraudulent conveyance; venue; compensatory damages; punitive damages; attorney fees; statutory exemptions; summary judgment.*

The case was properly disposed of in the county where prior, related proceedings occurred. The record demonstrated that there

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was no genuine issue of material fact that defendant-appellant engaged in a fraudulent transfer; summary judgment therefore was properly granted in favor of the plaintiff-appellee. The record supported the trial court's award of compensatory and punitive damages, and attorney fees. The statutory exemptions relative to damages were inapplicable.

106327 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAYLAND MARTEMUS

Affirmed.

Melody J. Stewart, J., Eileen A. Gallagher, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Ineffective assistance of counsel; manifest weight of the evidence; in-court identification; DNA evidence.

Trial counsel is not ineffective for not moving to suppress an in-court identification. Cross-examination of a witness challenges such an identification. Convictions are not against the manifest weight of the evidence when the evidence supporting the conviction is not rebutted.

106395 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDDIE D. BROWNLEE

Affirmed.

Sean C. Gallagher, J., Melody J. Stewart, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Drug trafficking; criminal tools; Evid.R. 801(C); plain error; allied offenses.

The trial court did not err by permitting a police officer to testify about observations made during his surveillance of a controlled-drug transaction; the conviction for drug trafficking and possession of criminal tools was not against the weight of the evidence in light of the video surveillance depicting the defendant's conduct; and the imposition of separate sentences on drug trafficking and the possession of criminal tools did not amount to plain error.

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106413 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GEORGE CASANOVA KIND

Affirmed.

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

KEY WORDS: *Weapons while under disability; manifest weight of the evidence; sufficient evidence; R.C. 2903.12.*

Weapons while under disability conviction was not against the manifest weight of the evidence even though jury acquitted appellant of all charges tried to the jury; the trial court, as trier of fact on weapons while under disability charge, was free to assess the testimony of the witnesses and find that the eyewitness testimony proved the offense beyond a reasonable doubt.

106426 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEFFREY HART GREINER

Affirmed.

Melody J. Stewart, J., Eileen T. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Murder; purpose; ineffective assistance of counsel; authentication; weight of the evidence.*

Authentication of evidence has a low threshold that requires the proponent of the evidence to make a prima facie showing of genuineness and leaves it to the jury to decide the true authenticity and probative value of the evidence. The court did not abuse its discretion allowing into evidence an undated, unsigned letter found in the defendant's bedroom because the letter, professing defendant's love and desire to marry, was consistent with evidence showing the relationship between the defendant and the victim.

106434 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.B.

Affirmed.

Eileen T. Gallagher, P.J., and Melody J. Stewart, J., concur; Sean C. Gallagher, J., concurs in judgment only.

KEY WORDS: *Juvenile; serious youth offender; sentence; objection; privilege; R.C. 2317.02(A); invocation hearing; confrontation clause; testimonial; waived; criminal proceeding; rehabilitated; ineffective assistance of counsel; amenability; mental health; journal entry; findings; R.C. 2152.14(E); sufficient; clear and*

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convincing evidence.

The trial court did not err by limiting the scope of defense counsel's cross-examination of the state's witness. The trial court's finding that appellant is unlikely to be rehabilitated during the remaining period of the juvenile court's jurisdiction is supported by clear and convincing evidence. The trial court made all necessary findings as required under R.C. 2152.14(E)(1). Appellant was not deprived of his Sixth Amendment right to the effective assistance of counsel at the invocation hearing.

106519 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CAROL VANG, ET AL. v CITY OF CLEVELAND, ET AL.

Affirmed.

Sean C. Gallagher, J., Melody J. Stewart, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Administrative appeal; zoning board; area variance; R.C. 2506.04.

The trial court did not err in affirming the board of zoning's decision to grant an area variance on the 20-foot rear-yard size requirement.

106700 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: K.W.

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: R.C. 2151.414; permanent custody; reasonable time period; hearsay; best interest; reasonable planning and diligence.

The award of permanent custody of an 11 year-old to the CCDCFS was affirmed. Trial court properly concluded that appellant would not be able to parent her child within a reasonable time and the child should not be placed with her within a reasonable time; trial court properly concluded that award of permanent custody was in child's best interest; trial court was not tainted by or prejudiced by hearsay; CCDCFS used reasonable case planning and diligence in attempting reunification and remediation of problems leading to removal of child.

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107093 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SAVONTE D. HUFFMAN

Reversed and remanded.

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

KEY WORDS: *Guilty plea; agreed sentence; conceded error.*

State concedes error when court agreed to accept a plea bargain that would order prison time in the case to be served concurrently with prison time in another case, yet ultimately decided to order sentences in both cases to be served consecutively. The proper remedy was for the court to resentence the defendant under the plea agreement or allow the defendant to withdraw his guilty plea.