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Court of Appeals, Eighth Appellate District

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August 23, 2018

105726 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LOGAN DANIEL SINCLAIR

Affirmed.

Anita Laster Mays, J., Eileen A. Gallagher, A.J., and Melody J. Stewart, J., concur.

KEY WORDS: *Aggravated murder, R.C. 2903.01, murder, R.C. 2903.02, aggravated robbery, R.C. 2911.01, felonious assault, R.C. 2903.11, kidnapping, R.C. 2905.01, Crim.R. 29, sufficiency of the evidence, manifest weight of the evidence, bifurcation of cases, lesser included offense instructions, consecutive sentencing, R.C. 2929.14, H.B. 86.*

The evidence is sufficient to support appellant's convictions and are sustained by the manifest weight of the evidence where appellant admitted to the armed robberies and shooting as confirmed by security camera videos and eyewitness testimony. The trial court did not err in failing to require separate trials for robberies at two establishments where the evidence was direct, uncomplicated, and could reasonably be separated as to each offense. Appellant was not entitled to lesser included offense instructions because the evidence did not support the instruction. The trial court correctly addressed each of the requisite elements of R.C. 2929.14 and accurately journalized the findings.

105911 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NORTHERN CHEMICAL BLENDING CORP., INC. v
STRIB INDUSTRIES, INC., D.B.A. PRODUCTS CHEMICAL ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Sean C. Gallagher, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *App.R. 3(D); notice of appeal; affidavit; strike; evidence; summary judgment; trade secret; misappropriation; breach of contract; tortious interference; business relationship; improper; invoice; written admission; counterclaim; deposition; testimony; admissible; untimely; Civ.R. 56.*

The trial court did not abuse its discretion in striking the untimely affidavit attached to the appellants' brief in opposition to summary judgment. Nor did the court abuse its discretion in striking exhibits that were not incorporated in a properly framed affidavit. The trial court erred as a matter of law in granting summary judgment in favor of defendants. Defendants did not come forward with admissible evidence suggesting that there is a genuine issue for trial.

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105998 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD LENARD

Affirmed in part; vacated in part; and remanded.

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

KEY WORDS: *Other acts, Evid.R. 404(B), pretrial identification, Evid.R. 901, restitution, ability to pay, sufficiency and manifest weight of the evidence.*

Trial court did not abuse its discretion in allowing the state to use other acts evidence to refute the defendant's claim that he was an innocent party in real estate transactions that he initiated. A witness's in-court identification of the defendant is not necessary when the accused's identity can be established through direct or circumstantial evidence. The witness's pretrial identification through the use of a photo array was properly admitted. Defendant's convictions upheld where evidence showed that the defendant held himself out to be the seller of two properties when he was not the owner. The defendant used false and deceptive statements to induce the buyers into signing fictitious agreements to purchase real estate.

106179 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY SIMMONS

Affirmed.

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

KEY WORDS: *Aggravated murder; aggravated robbery; having a weapon while under disability; material prejudice; Crim.R. 52(A); harmless error; plain error; Evid.R. 901; Evid.R. 803(6) stipulation; authentication; business records; Evid.R. 2945.29; discharge juror; alternate juror; discretion; manifest weight of the evidence; court costs; cumulative error.*

Affirmed appellant's conviction and sentence for aggravated murder, aggravated robbery, and having a weapon while under disability. Much of the claimed error did not cause material prejudice, amounted to harmless error, or did not amount to plain error. Because defense counsel did not explicitly limit stipulation to the authenticity of cell phone records, no foundational requirement was required for the authenticity of business records under Evid.R. 803(6). Trial court did not abuse its discretion in discharging a juror who was reported to express concern in deciding the case because of defendant's gang affiliation. Appellant's conviction was not against the manifest weight of the evidence. Remand was not required when appellant could seek waiver of court costs with the trial court. Appellant's claim of cumulative error was not substantiated.

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106250 PROBATE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
KEYBANK NATIONAL ASSOCIATION, TRUSTEE v HEATHER THALMAN, ET AL.

Reversed and remanded.

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

KEY WORDS: *Trust; declaratory judgment; law of the case; attorney fees.*

Law-of-the-case doctrine applied on remand from appellate court opinion that found that trustee had split a single trust into two trusts. The court erred by conducting trial on appellate court finding and reaching conclusion inconsistent with that reached by appellate court.

106266 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v REGINALD D. WILLIAMS

Affirmed.

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

KEY WORDS: *Motion to dismiss/preindictment delay; motion for mistrial; motion to disqualify counsel/ineffective assistance of counsel; sufficiency; manifest weight; prejudicial testimony/evidence; allied offenses; juvenile/bindover.*

The trial court did not err in denying appellant's motion to dismiss for preindictment delay. The state's charges of rape and kidnapping were within the statute of limitations. Nonetheless, appellant failed to address at the hearing the issue of witness unavailability and that the evidence was unavailable because the business is now closed. Those issues are waived and ultimately, appellant failed to show actual prejudice.

Appellant's disruptive behavior during trial falls under the invited error doctrine; evidence presented was not prejudicial and could be interpreted as appellant's consciousness of guilt; and the photographs entered into evidence were used to impeach appellant's testimony. The trial court's denial of appellant's motion for mistrial was proper.

Appellant failed to show that defense counsel's performance was deficient and fell below a reasonable standard of representation. Appellant's claim of ineffective assistance of counsel fails.

Witness testimony of the presence of a firearm, identification and DNA results were issues for the trier of fact and the jury did not lose its way in determining the sufficiency of that evidence. Appellant's convictions were not against the manifest weight of the evidence.

Each of appellant's acts were performed separately from each other

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and failed to meet the requirement for merger.

Appellant was not apprehended until after he was 21 years old and the common pleas court had proper jurisdiction.

106306 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEVEN TOBY

Affirmed.

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

KEY WORDS: *Sufficiency of the evidence; gross sexual imposition; burglary; attempted rape; eyewitness testimony; circumstantial evidence.*

The state presented sufficient evidence to support defendant's convictions for gross sexual imposition, burglary, and attempted rape where the victim testified that she knew the assailant, he forced his way into her apartment and assaulted her, his belongings were recovered from the apartment, a mixture of his and victim's DNA was recovered from his jacket, and video surveillance recorded him in the immediate area.

106456 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CAMERON CALDWELL

Affirmed.

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

KEY WORDS: *Notice of prior conviction; R.C. 2941.11.*

Caldwell's sentence was not contrary to law because the state was not required to include the notice of prior conviction specification in the indictment before imposing mandatory prison time for felonious assault. Under State v. Allen, 29 Ohio St.3d 53, 506 N.E.2d 199 (1987), when a prior conviction enhances the penalty of the offense but does not elevate the degree of the offense, the prior conviction is not an essential element of the offense and does not need to be alleged in the indictment.

106482 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUAN SMITH, A.K.A., JUAN SMITH, JR.

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Affirmed.

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

KEY WORDS: *Crim.R. 11(C); guilty plea; having weapons while under disability; participating in criminal gang.*

Defendant-appellant's convictions for participating in a criminal gang, having a weapon while under disability, and drug possession affirmed. The record demonstrates that the trial court fully complied with Crim.R. 11(C). The record is devoid of any confusion, hesitation, or protestations of innocence on defendant's part at the plea hearing. Defendant's argument that his plea was not knowingly, voluntarily, and intelligently made because the trial court did not advise him that having a weapon while under disability was a low-tier, third-degree felony was unpersuasive. The trial court advised defendant of the maximum penalties involved for his offenses as required under Crim.R. 11(C)(2)(a). Likewise, defendant's argument that the trial court should have concluded that he did not knowingly, voluntarily, or intelligently enter his guilty plea to participating in a criminal gang as a result of his post-plea statements at sentencing was unpersuasive.

106508	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICKY L. NOBLE			

Affirmed.

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

KEY WORDS: *Aggravated vehicular homicide; aggravated vehicular assault; leaving the scene of an accident; manifest weight of the evidence; recklessness; excessive speed; failure to slow; brakes; headlights; intoxication; ineffective assistance of counsel; opening statements; motion in limine; evidence of alcohol; circumstantial evidence; unfair prejudice.*

Defendant's convictions were not against the manifest weight of the evidence where evidence of excessive speed, failure to apply brakes, failure to illuminate headlights, and fleeing after the accident demonstrated that the defendant recklessly caused collision resulting in death and serious physical injuries to victims.

Defense counsel was not ineffective even though he described the defendant as "freaking out" after the accident, failed to file a motion in limine or object to evidence of defendant's alcohol use, and decided not to seek funds to retain an accident reconstructionist where these decisions did not amount to deficient performance and the defendant could not demonstrate that counsel's actions prejudiced his defense.

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106517 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAMEKA TURNER

Affirmed.

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

KEY WORDS: *Felony sentence; R.C. 2929.11; R.C. 2929.12; contrary to law.*

Appellant's sentence was not contrary to law when the record shows that the trial court considered the purposes of felony sentencing and relevant sentencing factors.

106529 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v VINCENT PARKER

Vacated and remanded.

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

KEY WORDS: *Motion for speedy trial; jurisdiction of trial court during pending appeal; scope of appeal; res judicata.*

Trial court erred in striking defendant's motion for speedy trial during the pendency of his appeal of trial court's denial of his motion to withdraw his guilty plea. Trial court had no jurisdiction to take action on the motion while appeal was pending and should have held motion in abeyance rather than striking it. Defendant's challenges to his sentences were outside the scope of the present appeal and otherwise barred by res judicata.

106580 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MITCHELL WHITE, JR.

Affirmed.

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

KEY WORDS: *R.C. 2953.08(G)(2); R.C. 2929.11; R.C. 2929.12.*

The trial court did not err when it imposed one year in prison for attempted abduction and domestic violence. The trial court considered all of the required sentencing factors. The record supported the sentence and the sentence was not contrary to law.

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106790 CLEVELAND MUNI. G CIVIL MUNI. & CITY
LAKESHA STEWART v DINA'S PIZZA AND PUB, INC.

Affirmed.

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

KEY WORDS: R.C. 1901.17; R.C. 1901.18; subject matter jurisdiction; claims for relief.

The trial court properly dismissed plaintiff's municipal court complaint where she set forth claims for relief with monetary prayers for relief that were not pled in the alternative and exceeded the monetary jurisdiction of the municipal court.