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Court of Appeals, Eighth Appellate District

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August 30, 2018

103957 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMETRIUS A. JACKSON

Affirmed.

Eileen A. Gallagher, A.J.; Sean C. Gallagher, J., concurs in judgment only (with separate opinion);
Mary J. Boyle, J., concurs in judgment only and concurs with separate opinion.

KEY WORDS: *Rape; gross sexual imposition; kidnapping; hearsay; next investigatory step; confrontation clause; harmless error; manifest weight.*

Any error in admitting detective's testimony describing his interaction with victim when he arrived on scene was harmless. Defendant's convictions for rape, gross sexual imposition and kidnapping were not against the manifest weight of the evidence.

105879 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RODERICK ROGERS

Affirmed.

Frank D. Celebrezze, Jr., J., and Melody J. Stewart, J., concur; Eileen A. Gallagher, A.J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Admission of evidence; authentication; Evid.R. 901; chain of custody; ineffective assistance of counsel; felonious assault; R.C. 2903.11; sufficiency; serious physical harm; R.C. 2901.01; manifest weight.*

The trial court did not err or abuse its discretion in permitting the introduction of the video evidence of the robbery. Appellant was not denied his constitutional right to the effective assistance of counsel. Because the record contains sufficient evidence of serious physical harm, appellant's felonious assault conviction was supported by sufficient evidence. Appellant's convictions are not against the manifest weight of the evidence.

105996 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENNETH STOCK, JR.

Affirmed.

Anita Laster Mays, J., and Patricia Ann Blackmon, J., concur; Mary J. Boyle, P.J., concurs in judgment

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only.

KEY WORDS: *Motion to suppress, search warrant affidavit, probable cause, R.C. 2925.03, R.C. 2925.11, GPS warrant.*

The trial court did not err in denying appellant's motion to suppress based on the totality of the circumstances. Police corroborated information from the anonymous tipster, the information in the affidavit was not stale, and other indications of drug activities including high electricity consumption, foil-covered windows, and secure fencing established probable cause to issue a GPS warrant for appellant's vehicle.

106115 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEAN BLEVINS

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; ineffective assistance of counsel; DNA expert; involuntary manslaughter; R.C. 2945.74; R.C. 2903.04; sentence, consistency.*

Defendant's convictions for felonious assault, involuntary manslaughter, aggravated assault, and having a weapon while under disability were not against the manifest weight of the evidence; counsel was not ineffective for proceeding to trial without defense DNA expert; sentence was not inconsistent with sentence received by codefendant; jury charge and verdict form clearly demonstrate that defendant was convicted of first-degree involuntary manslaughter and not third degree of this offense.

106223 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER N. HEIN

Reversed and remanded.

Anita Laster Mays, J., Tim McCormack, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Conceded error, nunc pro tunc, Crim.R. 43(A), clarification on the record.*

The state concedes that the trial court erred when the sentencing journal entry reflected that appellant pled guilty to aggravated murder instead of involuntary manslaughter pursuant to the plea agreement of the parties. The use of a nunc pro tunc entry is the correct method to correct a clerical error. The state also concedes that the trial court erred when the trial court incorrectly stated on the record that appellant pled guilty to aggravated murder instead of to involuntary manslaughter pursuant to the plea agreement of the parties. A hearing is required in the presence of the appellant to clarify and properly journalize the plea agreement.

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106247 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JOANNE FLYNN

Affirmed.

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

KEY WORDS: *Petty theft; deception; mens rea; evidence of prior conviction; Evid.R. 609(B); harmless error; manifest weight of the evidence; sufficient evidence; credibility.*

Admission of evidence regarding defendant's prior conviction was harmless error in bench trial where trial court indicated it would not affect the outcome of the trial.

Defendant's petty theft conviction was supported by sufficient evidence and by the manifest weight of the evidence even though defendant was caught before leaving the premises because prosecution proved she knowingly deceived store employees for the purpose of taking the items.

106326 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MATTHEW MINARIK

Affirmed.

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

KEY WORDS: *Ineffective assistance of counsel, abuse of discretion, community control conditions, R.C. 2929.27, vagueness, sex-offender registration, excessive punishment.*

The appellant's trial counsel was not ineffective for failing to object to the investigator's statements concerning the appellant's credibility. The appellant's trial counsel was also not ineffective for eliciting testimony from the investigator on cross-examination concerning the appellant's credibility. Further, the appellant was not prejudiced by his trial counsel's decision to admit the investigator's report.

The trial court did not abuse its discretion when it imposed as a condition of Minarik's community control that he could not work in any healthcare position in which he would have contact with patients and that he could not treat or examine patients. The trial court did not commit plain error when it classified the appellant as a Tier I sex offender and imposed a 15-year registration period.

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106374 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BUDDY FREEMAN

Affirmed.

Kathleen Ann Keough, J., Eileen A. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Sufficiency of evidence; manifest weight of evidence; felonious assault; domestic violence; ineffective assistance of counsel; Crim.R. 29(A).*

Defendant's convictions for felonious assault with a motor vehicle and domestic violence affirmed where the convictions were supported by sufficient evidence and were not against the manifest weight of the evidence; trial counsel was not ineffective for not moving for dismissal of the charges under Crim.R. 29(A) where the evidence was sufficient to support convictions on both charges.

106378 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v QUINTINE M. WALKER

Affirmed.

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

KEY WORDS: *Sufficient evidence, manifest weight of the evidence, constructive possession.*

The evidence was sufficient to sustain the convictions of the appellant. The state proved that the appellant had constructive possession of the handgun, and the convictions were not against the manifest weight of the evidence.

106385 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v FRANK KEHOE

Reversed and remanded.

Mary J. Boyle, P.J.; Frank D. Celebrezze, Jr., J., concurs; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Preindictment delay; unavailability of witnesses; actual prejudice; unjustifiable delay.*

The trial court prematurely granted the defendant's motion to dismiss for preindictment delay. The defendant's efforts to locate the missing witnesses were not sufficient to establish that the witnesses were unavailable. The defendant could not prove actual

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prejudice without properly establishing that the witnesses were unavailable. The trial court erred by granting the defendant's motion to dismiss for preindictment delay without balancing the defendant's purported actual prejudice against the state's reasons for the delay.

106445 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMAGIO CALLAHAN

Affirmed.

Larry A. Jones, Sr., J., Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Doctrine of issue preclusion; weapon while under disability; inconsistent verdicts.

The trial court's verdict of having a weapon while under disability, that was inconsistent with the jury's verdict of not guilty of murder, attempted murder, and felonious assault, was proper. Appellant's case did not involve successive prosecutions and his conviction on having a weapon while under disability was independent of the other charges.

106460 ROCKY RIVER MUNI. G CIVIL MUNI. & CITY
JONATHAN WALTON v MERCEDES BENZ USA, ET AL.

Affirmed.

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

KEY WORDS: Right to counsel; civil litigation.

Unless otherwise provided by statute, there is no right to counsel in a civil contract case.

106551 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HOWARD L. DRAKE

Dismissed.

Kathleen Ann Keough, J., Eileen A. Gallagher, A.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Dismiss, nunc pro tunc, extend.

Defendant's appeal is dismissed as untimely because the trial court's issuance of a nunc pro tunc did not extend the time to file an appeal.

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106762 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: T.C., ET AL.

Affirmed.

Kathleen Ann Keough, J., and Mary J. Boyle, J., concur; Eileen T. Gallagher, P.J., concurs with separate opinion.

KEY WORDS: *Permanent custody; R.C. 2151.414(E)(1); R.C. 2151.414(E)(4); guardian ad litem report.*

Trial court did not abuse its discretion in granting permanent custody of children to CCDCFs where the children could not be placed with Mother within a reasonable time or should not be placed with her. There was sufficient evidence under R.C. 2151.414(E)(1) that Mother had repeatedly and continuously failed to remedy the conditions that led to the removal of the children where Mother, who was heroin-dependent, did not complete any drug treatment required by her case plan. There was also sufficient evidence under R.C. 2151.414(E)(4) that Mother demonstrated a lack of commitment to the children by failing to visit them. There was no plain error in the trial court's consideration of the untimely filed guardian ad litem's report where Mother failed to object to the late filing, had notice of the report, and had an opportunity at the permanent custody hearing to cross-examine the guardian ad litem about the report and her recommendation.

106795 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES GOODE, JR.

107436 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES GOODE, JR.

Vacated in part and remanded.

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

KEY WORDS: *Conceded error; blanket sentence; void sentences; failure to notify regarding postrelease control.*

Blanket sentence imposed by trial court at sentencing hearing was not a valid sentence. Trial court erred in imposing sentences in sentencing journal entry that it did not impose at sentencing hearing. Postrelease control portions of sentences void where trial court failed to notify defendant regarding postrelease control at sentencing hearing.