

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 13, 2018

106313 BEREAMUNI. C CRIMINAL MUNI. & CITY
CITY OF BROOKPARK v JOSEPH G. RODOJEV

Affirmed.

Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: *Scientific evidence; common law; Evid.R. 103; Evid.R. 701; Evid.R. 702; expert testimony; admissibility; sufficiency of the evidence.*

Defendant failed to object to the admissibility of the results from the laser speed measuring device and waived all but plain error. The trial court did not plainly err in failing to sua sponte require the government to demonstrate the scientific reliability of a speed measuring device through judicial notice or expert testimony.

106322 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE JOHNSON

Affirmed.

Frank D. Celebrezze, Jr., J., Mary Eileen Kilbane, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Crim.R. 11; guilty plea; R.C. 2950.11; sex offender classification; sex offender registration duties.*

The trial court substantially complied with Crim.R. 11 because it sufficiently articulated to appellant his duties as a Tier III sex offender and, therefore, his plea of guilty was knowingly, intelligently, and voluntarily made.

106339 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NIKOLAY KALKA

Affirmed.

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

KEY WORDS: *R.C. 2907.05(A)(4), gross sexual imposition, R.C. 2905.01(A)(4), kidnapping for the purpose of engaging in sexual activity, R.C. 2941.147, sexual motivation specification.*

Appellant's convictions were not against the manifest-weight of the

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evidence and were based on sufficient evidence as a matter of law. Testimonial inconsistencies do not translate into an entitlement of reversal based on sufficiency or manifest-weight of the evidence. A sexual motivation specification requires that the state show that the underlying offense was committed with a purpose to gratify the sexual needs or desires of the offender. Appellant failed to demonstrate prejudice by counsel's failure to challenge the selection of a former prosecutor who was acquainted with the prosecutor trying the case. Counsel was not ineffective for failing to request merger of offenses that would be contrary to applicable law.

106577	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v HUMBERTO HERNANDEZ			

Affirmed.

Melody J. Stewart, J., Tim McCormack, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Forfeiture of error; failure to object; ineffective assistance of counsel; bolstering; gross sexual imposition.*

Defense counsel had no duty to file a pretrial motion to exclude evidence of uncharged conduct when the state did not give notice of its intent to use other acts evidence as required by Evid.R. 404(B).

Testimony by parents regarding the manner in which they learned that their children had been sexually assaulted was not bolstering.

Jury could rationally infer a purpose of sexual arousal or gratification on evidence that defendant forced child victim to engage in mutual touching of their genitals.

106651	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
ALSOL, INC. v FABIAN BARBOLOVICI, ET AL.			

Affirmed.

Melody J. Stewart, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Civ.R. 11; R.C. 2323.51; sanctions.*

Party's attempt to void a sheriff's sale and enforce the terms of a lease with prior owner of property was not so frivolous that the court abused its discretion by refusing to award sanctions.

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106661 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY JAMES

Affirmed.

Mary Eileen Kilbane, P.J., and Larry A. Jones, Sr., J., concur; Frank D. Celebrezze, Jr., J., dissents (see separate dissenting opinion).

KEY WORDS: *Motion to suppress; Terry stop; reasonable suspicion.*

The trial court did not err in granting a motion to suppress evidence obtained during an investigatory stop of a legally parked vehicle. In evaluating whether reasonable suspicion of criminal activity existed to support the stop, the trial court heard testimony from the officer, who initiated the stop. The trial court found that a single overdose at a house down the street did not support the officer's testimony that the car was parked in a known drug area.

106696 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEPHAUN GIBSON

Dismissed.

Tim McCormack, J., Mary Eileen Kilbane, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *R.C. 2929.13; R.C. 2953.08; not subject to appellate review; mandatory community control; firearm.*

Because the trial court found that the appellant's offense was committed with a firearm on or about his person or under his control, pursuant to R.C. 2929.13(B)(1)(b)(i), appellant's sentence is not subject to appellate review.

106699 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: M.P.

Reversed.

Eileen A. Gallagher, A.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Serious youthful offender (SYO), R.C. 2152.14(E), consecutive sentences, ineffective assistance of counsel.*

Trial court erred in finding that appellant was serving "the juvenile portion of a serious youthful offender dispositional sentence" at the time the state filed its motion to impose the adult portion of his SYO sentence. Appellant had been sentenced in two separate juvenile

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cases and the trial court ordered the two resulting sentences to be served consecutively. One of the cases had an SYO sentence and the other did not. At the time the state sought to impose appellant's adult sentence, he was serving the non-SYO juvenile sentence and, therefore, did not qualify for imposition of his adult term under R.C. 2152.14(E). Appellant's counsel provided ineffective assistance by offering a stipulation under R.C. 2152.14(E) to appellant's prejudice.

106721	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ORRIN ROBINSON			

Vacated and remanded.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Waiver of counsel; knowingly, voluntarily, intelligently; sufficient inquiry; nature of the charges; defenses and mitigating circumstances; standby counsel.

Trial court did not make sufficient inquiry to determine if the defendant understood and knowingly waived his right to counsel where the court did not adequately explain the nature of the charges to the defendant, and did not discuss with him any possible defenses and mitigating circumstances. The trial court also erroneously advised the defendant that he could not ask questions of appointed standby counsel. Thus, the defendant's waiver of counsel was not knowingly, voluntarily, and intelligently made.

106782	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
J.J. v A.W.			

Affirmed.

Tim McCormack, P.J., and Frank D. Celebrezze, Jr., J., concur; Sean C. Gallagher, J., concurs (with separate concurring opinion attached).

KEY WORDS: Protection order; domestic violence; R.C. 3113.31; abuse of discretion; credibility; preponderance of the evidence.

Appellant's due process rights were not violated by the limitations imposed by the magistrate at the full hearing. The court did not abuse its discretion in including appellant's daughter as a protected person in the protection order.

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106824 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL MIDDLETON

Affirmed.

Frank D. Celebrezze, Jr., J., Tim McCormack, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Jail-time credit; R.C. 2929.19(B)(2)(f)(i); domestic violence; R.C. 2919.25(A); manifest weight; credibility.*

Appellant was not sentenced to a prison term and he did not file a motion for calculation of jail-time credit in the trial court. Therefore, appellant was not entitled to a calculation of jail-time credit. Appellant's conviction for domestic violence was not against the manifest weight of the evidence.

106889 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MA-KIA S. JEFFRIES

Affirmed.

Anita Laster Mays, J., and Frank D. Celebrezze, Jr., J., concur; Sean C. Gallagher, P.J., concurs with separate opinion.

KEY WORDS: *Evid.R. 803(4); hearsay.*

The child victim's statements to the Child Protection Specialist were admissible under the hearsay exception in Evid.R. 803(4) because they were made primarily for the purpose of medical diagnosis and treatment. The specialist evaluated the victim in order to properly address and diagnose her mental health/behavioral issues, and she continued her evaluation in order to implement a means by which the victim's mental and emotional needs could be met.

106890 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v A.P.

Affirmed.

Tim McCormack, P.J., Melody J. Stewart, J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Domestic violence; endangering children; discovery; Crim.R. 16; manifest weight of the evidence; credibility.*

The trial court did not abuse its discretion in admitting text message and voicemail evidence that had not been provided to the

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defendant prior to trial where the discovery violation was not willful and did not prejudice the defendant. The convictions were not against the manifest weight of the evidence.

106896 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
VONCEIL MURPHY v DITECH FINANCIAL, LLC, ET AL.

Affirmed in part, reversed in part, and remanded.

Melody J. Stewart, J., Tim McCormack, P.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: Abuse of process; Ohio Consumer Sales Practices Act; supplier; servicer; nonbank mortgage lender; Civ.R. 12(B)(6).

Court erred by granting Civ.R. 12(B)(6) motion to dismiss claims made under Ohio Consumer Sales Practices Act because the complaint contained sufficient allegations that party seeking to foreclose on property that the plaintiff no longer owned was not just a servicer, but a nonbank mortgage lender made subject to the act.

106916 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL FERRARA, SR., ET AL. v VICCHIARELLI FUNERAL SERVICES, INC., ET AL.

Affirmed.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Civ.R. 41(A), compulsory counterclaim, res judicata, privity.

Although the appellants voluntarily dismissed their complaint pursuant to Civ.R. 41(A), when the defendants filed a counterclaim, the appellants' claims against the defendants and their privities transformed into a compulsory counterclaim. By not asserting their rights during the proceedings in the original lawsuit, any subsequent lawsuit asserting claims that could have been raised will be barred by res judicata if, at the time of the first lawsuit, the parties were known, the claims arose out the same transaction, and sufficient privity exists.

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106928	COMMON PLEAS COURT	A	CRIMINAL C.P.
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STATE OF OHIO v MONTEZ COBB

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Consecutive sentences; ineffective assistance of counsel; guilty plea; jointly recommended sentence; authorized by law; R.C. 2929.14; R.C. 2953.08(D)(1).*

Appellant's 30-year prison sentence is not subject to appellate review because the sentence was within the jointly recommended sentencing range and authorized by law. Appellant was not denied his constitutional right to the effective assistance of counsel.

106963	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
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BARBARA A. MORGAN v MELVIN R. MORGAN

106996	DOMESTIC RELATIONS	F	CIVIL C.P.-JUV, DOM, PROBATE
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BARBARA A. MORGAN v MELVIN MORGAN

Affirmed.

Mary Eileen Kilbane, P.J., Sean C. Gallagher, J., and Patricia A. Blackmon, J., concur.

KEY WORDS: *Domestic relations; separation agreement; life insurance; magistrate's decision; adopting magistrate's decision; contempt; abuse of discretion.*

Judgment affirmed. Here, the parties, over the course of five years and two separate contempt hearings, were unable to determine what "cooperate" means in the context of the decree. As a result, the trial court was within its power to clarify and construe its original property division so as to effectuate its judgment when it provided the procedure to do so in its February 2018 order. In addition, plaintiff did not present any evidence that she presented defendant with a life insurance application. Based on the foregoing, we decline to find that the trial court abused its discretion when it refused to hold defendant in contempt.