

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 22, 2018

105248 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ARNOLD BLACK v DET. RANDY HICKS, ET AL.

Reversed and remanded.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Jurisdiction; jury trial; final appealable order; notice of appeal.*

The trial court entered the May 9, 2016, June 3, 2016, and July 7, 2016 orders, commenced a jury trial on May 25, 2016, and accepted the jury's verdict on May 31, 2016, while it was divested of jurisdiction because of pending appeals. These orders and the jury's verdict are null and void, and therefore, must be vacated.

105488 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEESHAWN T. CAMPBELL

Affirmed.

Anita Laster Mays, P.J., Frank D. Celebrezze, Jr., J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Abuse of discretion, presentence motion to withdraw guilty plea.*

The trial court did not abuse its discretion in denying the appellant's presentence motion to withdraw his guilty plea because the appellant continued with pleading guilty after being allowed to recite his version of the facts.

105557 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v TODD C. KALISH

Reversed and remanded.

Kathleen Ann Keough, P.J., and Frank D. Celebrezze, Jr., J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Motion to suppress; reasonable suspicion; traffic stop; field sobriety tests.*

Trial court erred in granting defendant's motion to suppress results of field sobriety tests where, under the totality of the circumstances, the officer had a reasonable suspicion after a valid

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traffic stop that the defendant was driving while intoxicated, sufficient to extend the initial stop and administer field sobriety tests.

105638 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RONALD CURRY

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Preindictment delay; commencement of prosecution; summons; Crim.R. 6(F); R.C. 2901.13(F); manifest weight; sufficiency of the evidence; rape; aggravated robbery; kidnapping; allied offenses.

A summons was issued on the final day of the statute of limitations, commencing the action for the purposes of R.C. 2901.13(F). The defendant did not demonstrate that he was prejudiced by the preindictment delay because the lost or missing DNA evidence did not pertain to his guilt or innocence, only that of the unknown accomplice. There was sufficient evidence in support of the convictions, and the trier of fact did not lose its way so as to create a manifest injustice.

105649 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MOSE D. STEWART

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Guilty plea; right to counsel; motion to withdraw as counsel; motion to withdraw guilty plea; Crim.R. 32.1; competency evaluation; R.C. 2945.37; due process; abuse of discretion; Crim.R. 11.

Appellant was not denied his constitutional right to counsel. The trial court did not abuse its discretion in denying appellant's counsel's motions to withdraw as counsel or appellant's requests for new counsel. The trial court did not abuse its discretion in denying appellant's motion and requests to withdraw his guilty plea. Appellant stipulated to the court psychiatric clinic's report, and thus, his due process rights were not violated with respect to the results of the report.

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105727 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JOHN VUYANCIH, ET AL. v JONES & ASSOCIATES LAW GROUP, LLC, ET AL.

Affirmed.

Larry A. Jones, Sr., J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Ohio Consumer Sales Practices (CSPA); R.C. 1345.09(B)/class actions; R.C. 1345.05(B)(2)/prior notice.*

Appellants failed to establish that, either by legislation or a publicly available court decision, appellees had prior notice that appellees' actions were in violation of the Ohio Consumer Sales Practices Act.

105775 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES TAYLOR

Affirmed.

Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: *Sentence contrary to law.*

The trial court did not err in sentencing the appellant to 24 months incarceration because the sentence was not contrary to law.

105832 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE, ET AL v MARY CLAIRE FRANKO, ET AL.

Affirmed.

Sean C. Gallagher, J., Tim McCormack, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Foreclosure decree; standing; assignment; R.C. 1303.38; Civ.R. 56; material alteration; personal knowledge; affidavit.*

Summary judgment in favor of financial institution is affirmed because a mortgagor lacks standing to challenge the assignment of a mortgage, a missing allonge does not constitute a material alteration of the instrument, and the opposing party failed to demonstrate that an affiant lacked personal knowledge for the purposes of demonstrating genuine issues of material fact.

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105873 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONALD RAY WILLIAMS

Affirmed.

Sean C. Gallagher, J., Tim McCormack, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Vacate; void; judgment; firearm specifications; Crim.R. 32(B); former R.C. 2929.71(B); R.C. 2941.25; allied offenses; direct appeal; postconviction; untimely; res judicata.*

Affirmed trial court's decision that denied appellant's motion to vacate void judgment, which made a blanket assertion that the judgment of conviction did not conform with Crim.R. 32(B), and which claimed that the trial court violated R.C. 2929.71(B) when it imposed consecutive sentences for firearm specifications and that the offenses constituted allied offenses of similar import pursuant to R.C. 2941.25. The trial court correctly construed appellant's motion as a petition for postconviction relief under R.C. 2953.21 and found it was untimely and otherwise barred by res judicata.

105886 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: Da. B., ET AL.

Affirmed.

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

KEY WORDS: *Motion for extension of temporary custody, abuse of discretion, R.C. 2151.353, R.C. 2151.415, permanent custody, R.C. 2151.414, clear and convincing evidence.*

The juvenile court did not abuse its discretion when it denied father's motion to extend temporary custody. Further, the juvenile court did not abuse its discretion when it granted CCDCFS permanent custody of father's three children because the children could not be placed with father and permanent custody was in the children's best interests.

105961 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRANDON M. HARPER

Affirmed.

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

KEY WORDS: *Motion to suppress; blood test; R.C. 4511.19; driving*

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while under the influence; Evid.R. 702; Ohio Administrative Code Chapter 3701-53; health care provider; R.C. 2317.02.

The state's expert witness failed to demonstrate that the results of appellee's blood test were valid, accurate, or reliable to a reasonable degree of scientific certainty. Therefore, the trial court did not abuse its discretion in granting appellee's motion to suppress the results of the blood test.

105977 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LAURA BRADSHAW, ET AL. v NEW VILLAGE CORPORATION, ET AL.

Reversed.

Eileen T. Gallagher, J., Eileen A. Gallagher, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: Motion to dismiss; Civ.R. 12(B)(6); sovereign immunity; political subdivision immunity; governmental function; sidewalk.

Trial court erred in denying city's motion to dismiss where allegations in the third-party complaint supported finding that city was immune from liability for injuries caused by alleged failure to properly maintain public sidewalk under R.C. Chapter 2744.