

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 21, 2018

105881 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TREVONTE JENKINS

Affirmed.

Mary J. Boyle, J., Tim McCormack, P.J., and Melody J. Stewart, J., concur.

KEY WORDS: *In-court identification, impermissibly suggestive, Telfaire instruction, sufficiency of the evidence, manifest weight of the evidence, allied offenses, R.C. 2923.16, maximum sentence, consecutive sentences, right to remain silent.*

The trial court did not abuse its discretion in allowing a witness to identify the defendant as the shooter because the witness observed the defendant get into a fight from a short distance away and saw him two more times throughout the night. The trial court did not abuse its discretion in denying the defendant's request for a Telfaire instruction because such an instruction is not required in every case and the trial court gave a general instruction regarding eyewitness identification. The defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. The trial court did not err when it found that the defendant's convictions under R.C. 2923.16 were not allied and, therefore, did not merge for sentencing purposes. The defendant's sentence was not contrary to law. The witness-detective's comment — "Mr. Jenkins knows where he went. Other than that, I'm not aware of anyone who does." — did not violate the defendant's right to remain silent as it was responsive to a question concerning his investigation.

105899 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CARRIE KURUTZ v CITY OF CLEVELAND, ET AL.

Reversed and remanded.

Melody J. Stewart, J., and Eileen T. Gallagher, P.J., concur; Sean C. Gallagher, J., dissents with separate opinion.

KEY WORDS: *Zoning; use variance; economic hardship.*

Court erred by affirming decision of board of zoning appeals to grant a use variance to operate a motorcycle dealership in a local retail business district because there was no evidence that the applicant would suffer any economic hardship if the requested variance was denied. The applicant admitted that there were other viable economic uses for the property, but that it rejected those because it believed the dealership was better suited to the area.

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105966 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN MICHAILIDES

Affirmed as modified.

Kathleen Ann Keough, J., Tim McCormack, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Speedy trial, reindictment, motion for speedy trial.*

The State violated defendant's right to a speedy trial. The speedy trial time clock restarted when the defendant was arrested under a subsequent indictment that was premised on the same underlying facts that were known to the state in the previous indictment. However, any time period that has elapsed under the original indictment was added to the time period commencing with the second indictment. Defendant's pro se motion for speedy trial did not stop the speedy trial clock because it was not seeking a dismissal, but merely requesting the trial court to set a trial date.

106112 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT M. ARIAS

Vacated and remanded.

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

KEY WORDS: *Guilty plea; knowingly, intelligently, and voluntarily made; Crim.R. 11(C); substantial compliance; nonconstitutional right; completely failed to comply; maximum penalty involved.*

Defendant's guilty plea vacated. Based on the language used by the trial court, defendant had no basis to understand from the court that the maximum sentence he could receive consisted of a sentencing range from 6-12 months on Count 26. Because the record reflects that defendant was unaware of the maximum penalty for that count, his plea was not knowingly, intelligently, and voluntarily made.

106152 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LATASHA LOPER v HELP ME GROW OF CUYAHOGA COUNTY

Affirmed.

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

KEY WORDS: *Motion to dismiss; conversion; motion for summary judgment; failure to exhaust administrative remedies; Individuals with Disabilities Education Act (IDEA); Part C; early intervention services; Ohio Adm.Code 3701-8-10(F)(3).*

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(Case 106152 continued)

The trial court did not err in converting defendant-appellee county agency's motion to dismiss into a motion for summary judgment. The trial court gave reasonable notice to the parties that it was converting the motion and provided plaintiff-appellant 14 days to respond and submit competing evidence. The trial court properly granted summary judgment in favor of defendant-appellee on plaintiff-appellant's claims related to Part C of the IDEA on behalf of her minor children because plaintiff-appellant did not dispute that she failed to exhaust available administrative remedies before seeking judicial intervention. Plaintiff-appellant was required to file an administrative complaint for a due process hearing under Ohio Adm.Code 3701-8-10(F)(3) prior to filing her complaint in the common pleas court.

106300 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MAURICE WOODARD

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Patricia A. Blackmon, J., concur.

KEY WORDS: *Burglary; theft; having weapons while under disability; receiving stolen property; Crim.R. 11(C)(2); guilty plea; consecutive sentences; maximum; restitution; abuse of discretion; plain error.*

Defendant-appellant's guilty plea and sentence affirmed. The trial court strictly complied with Crim.R. 11(C) in advising the defendant of his constitutional rights. The trial court offered to more fully explain any of these rights to the defendant if he did not understand. The defendant replied "yes" to the trial court's question of whether he understood each of these rights. Thus, his argument that the trial court failed to fully comply with Crim.R. 11(C) by more fully explaining the legal principles behind his constitutional rights was unpersuasive. The trial court did not err in sentencing defendant. Defendant's sentence was not contrary to law, and the trial court properly made all findings required by R.C. 2929.14(C) in support of its imposition of consecutive sentences. The trial court did not abuse its discretion in ordering amounts of restitution recommended by each of the victims. Defendant failed to object, and the record does not demonstrate plain error.

106329 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DIAMOND ROBINSON

Affirmed.

Tim McCormack, J., Mary Eileen Kilbane, J., and Patricia Ann Blackmon, J., concur.

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(Case 106329 continued)

KEY WORDS: Contingent plea offer; appoint counsel.

The requirement of unanimity among codefendants in accepting a plea offer does not violate due process standards, and a trial court does not abuse its discretion in denying a motion for new trial counsel on the day of trial without the defendant demonstrating a complete breakdown in the attorney-client relationship.

106738 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.F.

Affirmed.

Eileen T. Gallagher, J., Tim McCormack, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Permanent custody; temporary custody; Indian Child Welfare Act; 25 U.S.C. 1912; Native American ancestry; best interest of the child; guardian ad litem; wishes of the child; temporary custody; permanent placement.*

Trial court did not violate Indian Child Welfare Act even though case worker provided information regarding the child's ancestry rather than a parent because mother was present during the proceedings and neither objected or provided different information on the subject.

Award of permanent custody to the children's services agency was in the child's best interest where neither parent was able to care for the child; the child's aunt was unable provide a stable home; and the child was thriving with her foster parents.

106761 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: J.Y.

Affirmed.

Larry A. Jones, Sr., J., Tim McCormack, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *R.C. 2945.67/state's right to appeal; abuse of discretion; R.C. 2941.32/multiple indictments.*

The state, under the plain meaning of R.C. 2945.67, could as a matter of right appeal the trial court's dismissal.

The trial court did not err where it dismissed the state's second complaint with prejudice against the juvenile. The state filed two identical complaints and requested that one complaint be dismissed with no intent to refile that exact complaint.

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106921 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v T.A.

Reversed and remanded.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: R.C. 2953.52(B)(1)/application to seal official records.

The trial court erred where it did not hold a hearing prior to denying appellant's motion to seal the record.