

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 21, 2018

105671 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
GREGORY E. BECKWITH v STATE OF OHIO

Affirmed.

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

KEY WORDS: *Wrongful imprisonment; menacing by stalking; actual innocence; preponderance of the evidence; R.C. 2903.211; R.C. 2743.48(A); summary judgment.*

Because appellant was unable to establish that he was innocent of menacing by stalking by a preponderance of the evidence, summary judgment in favor of the state was proper.

106298 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v M.E.

Reversed and remanded.

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

KEY WORDS: *Expungement; sealing; R.C. 2953.32(A)(1); eligible offender; R.C. 2953.31(A); substantially similar; minor misdemeanor; increased penalty; municipal ordinance; equal protection; S.B. 66.*

Trial court abused its discretion in finding applicant an eligible offender under R.C. 2953.31 because pursuant to the plain language of the statute, applicant had too many convictions. At issue was applicant's prior open container conviction, which was a fourth-degree misdemeanor under the municipal ordinance for which he was convicted but a minor misdemeanor under the analogous state statute. The trial court did not address the constitutional issue of whether precluding expungement in such a case would result in a violation of the federal and state Equal Protection Clauses. The case was remanded for consideration of the constitutional issue raised, if it was still relevant due to the recent passage of S.B. 66 and the expansion of the definition of "eligible offender."

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106324 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WANDA TAYLOR-STEPHENS v RITE AID OF OHIO, ET AL.

Affirmed in part; reversed in part.

Eileen T. Gallagher, J., and Tim McCormack, P.J., concur; Mary J. Boyle, J., concurs in part and dissents in part with separate opinion.

KEY WORDS: *Racial discrimination; hostile work environment; retaliation; directed verdict; Civ.R. 50(A); evidence; authenticate; Evid.R. 901; relevant; Evid.R. 401; Evid.R. 402; protected activity; adverse employment action; insubordination; causal link; National Labor Relations Act; union; conflict of interest; supervisor; at-will employee; jury instructions; Equal Employment Opportunity Commission; motion for new trial; irregularities in the proceedings; bias; punitive damages; malice; costs; App.R. 16(A)(7).*

Trial court properly excluded documents where they were not authenticated by witnesses. Trial court properly excluded evidence of racial composition of neighborhoods because such evidence was not relevant to plaintiff's claims.

Trial court properly granted directed verdict in favor of defendant on plaintiff's retaliation claim where plaintiff admitted that she refused to comply with direct orders of her supervisors and her employment was terminate as a proximate result of her insubordination.

The trial court's jury instruction regarding relevant provision of National Labor Relations Act was an accurate statement of the law and was warranted by the evidence.

Trial court's jury instruction on at-will employment was an accurate statement of the law and warranted by the evidence.

Trial court properly denied plaintiff's motion for new trial where plaintiff failed to demonstrate any irregularities in the proceedings deprived her of a fair trial.

Trial court properly declined to provide instruction on punitive damages where there was no evidence of malice.

Trial court erred in taxing deposition transcriptions as costs where the transcripts were not necessary to the action. However, trial court properly taxed expenses associated with the transcript and video-recording of plaintiff's deposition where defendant needed the transcript and video-recording to impeach plaintiff's testimony.

Appellant's claim that jury verdict was against the manifest weight of the evidence was overruled pursuant to App.R. 16(A)(7) because appellant failed to provide any argument, citations to the record, or any legal authority to support this assigned error.

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106512 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v CLAUDE D. GARRETT

Affirmed.

Patricia Ann Blackmon, J., Tim McCormack, P.J., concur; Melody J. Stewart, J., dissents with attached opinion.

KEY WORDS: *Aggravated menacing; sufficiency of the evidence; manifest weight of the evidence.*

Aggravated menacing conviction affirmed as being supported by sufficient evidence and not against the manifest weight of the evidence in the record. The victim's inconsistent testimony does not render the conviction against the weight of the evidence.

106659 BOARD OF TAX APPEALS H ADMIN APPEAL
FRED P. SCHWARTZ, TRUSTEE v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Property tax value; board of revision; board of tax appeals; burden of proof; R.C. 5717.04.*

The Board of Tax Appeals order affirming the Cuyahoga County Board of Revision's valuation of a property for tax purposes was affirmed. A property owner has the burden of proving that he or she is entitled to a right to a reduction. Plaintiff did not present any evidence of the value of his home for the relevant tax year.

106687 SOUTH EUCLID MUNI. C CRIMINAL MUNI. & CITY
CITY OF SOUTH EUCLID v ANTHONY DATILLO

Reversed.

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

KEY WORDS: *Motion to dismiss; criminal charges; Crim.R. 48(B).*

A municipal court has the inherent right to dismiss an indictment, pursuant to Crim.R. 48(B). If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal. The municipal court's journal entry, consisting of a single sentence, provided no indication of its reasoning for the dismissal of the charges. As such, it was insufficient to comply with the requirements of Crim.R. 48(B).

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106727 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUSTIN JARMON

Affirmed in part, reversed in part and remanded.

Patricia Ann Blackmon, J., Tim McCormack, P.J., concur; Sean C. Gallagher, J., concurs in judgment only with separate attached opinion.

KEY WORDS: *Sentencing; consecutive sentencing; sentencing-consistency; R.C. 2929.14(B)(1)(c)(iii); drive-by firearm specifications; firearm specifications; R.C. 2929.14(B)(1)(g).*

Trial court complied with R.C. 2929.14(C)(4) in imposing consecutive sentences within one case, and consecutive to second case; under R.C. 2929.14(B)(1)(g), trial court had discretion to impose multiple firearm specifications because defendant pled guilty to three counts of attempted murder; under R.C. 2929.14(B)(1)(c)(iii), trial court could impose only one five-year firearm specification for crimes committed as part of the same transaction.

106735 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LARRY PHELPS

Affirmed.

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

KEY WORDS: *Aggravated murder; felony murder specifications; contract; specific enforcement; third-party beneficiary; res judicata; plain error; newly discovered evidence; harmless error.*

The trial court did not err in denying appellant's motion for specific enforcement. Appellant's due process arguments pertaining to his 1995 jury trial are outside the scope of this appeal, untimely, and barred by res judicata.

106754 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRYAN LUTON

Affirmed in part; modified in part; vacated in part; and remanded.

Frank D. Celebrezze, Jr., J., Eileen A. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Misuse of credit cards; R.C. 2913.21; grand theft; R.C. 2913.02; venue; sufficiency; manifest weight; R.C. 2901.12; plain error; Crim.R. 52(B); course of criminal conduct; invited error; stipulation; R.C. 2913.61.*

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As the state concedes, the evidence in the record does not support a conviction for fourth-degree felony misuse of credit cards. Accordingly, appellant's conviction is modified to a first-degree misdemeanor misuse of credit cards. The trial court's sentence on the fourth-degree felony conviction is vacated and the matter is remanded for resentencing on this count only.

Appellant's convictions for grand theft and first-degree misuse of credit cards are supported by sufficient evidence and are not against the manifest weight of the evidence. The record contains sufficient evidence establishing that venue in Cuyahoga County was proper.

106771	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RICHARD G. BROWN			

Reversed and remanded.

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

KEY WORDS: Consecutive sentences, imposition of costs, indigent, remanded for resentencing.

Trial court erred by failing to make the necessary findings for the imposition of consecutive sentences. Because the court failed to make the necessary findings, case is remanded for the limited purpose of determining whether consecutive sentences should be imposed and, if so, making the required findings.

It is within the trial court's discretion to waive costs for an indigent defendant; the discretion also includes the discretion not to waive them. A finding of indigence for purposes of appointment of counsel is insufficient to warrant a waiver of costs and fines at sentencing.

106780	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ANTIONE DAVIS, AKA, ANTOINE DAVIS			

Affirmed.

Kathleen Ann Keough, J., Mary Eileen Kilbane, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Competent; witness; Evid.R. 601(C); R.C. 4549.13; R.C. 4549.14; sufficiency of the evidence; illegal right turn on red.

Police officer was not required to be in a marked car or his uniform when he stopped defendant for a traffic stop, and was competent to testify at trial regarding the traffic stop, because the officer's main purpose for his period of duty was to patrol for drug activity, not

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enforce traffic laws; defendant's conviction for illegal right turn on red was supported by sufficient evidence.

106800 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NORTH COAST COMMERCIAL ROOFING SYSTEMS v MGM, INC. AND MICHAEL C. LYON

Affirmed.

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

KEY WORDS: Request for admissions; Civ.R. 36; discretion; summary judgment; Civ.R. 56.

Trial court had discretion to deny appellant's motion to vacate deemed admissions where appellant submitted responses to the discovery request nearly five months late, the court found appellant had disregard for the court's deadlines and schedule, and appellee would be prejudiced by permitting withdrawal. Where each of the purported genuine issues of material fact proffered by appellant had been conclusively resolved in favor of appellee by the admissions that had not been withdrawn or amended, summary judgment was proper.

106836 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ISABELLA D. JONES v UNIVERSITY HOSPITALS OF CLEVELAND, ET AL.

Affirmed in part; reversed and remanded in part.

Kathleen Ann Keough, J., Mary Eileen Kilbane, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Summary judgment; manually filed complaint; statute of limitations; tolling agreement; addresses; caption of complaint; clerk of courts; authority.

Trial court did not err in granting summary judgment to certain defendants where tolling agreements did not apply to those defendants; clerk of courts had no authority by statute or court rule to reject manually filed complaint that did not contain the addresses of the parties in the caption; complaint was therefore timely commenced and trial court erred in granting summary judgment in favor of defendant.

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106878 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHRISTOPHER CAREY

Affirmed.

Anita Laster Mays, J., Tim McCormack, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 11(C)(2)(a); postrelease control.*

The appellant has not demonstrated that the trial court erred when it accepted his guilty plea. The trial court's use of "will" versus "mandatory" is sufficient to convey that the appellant would be placed on mandatory postrelease control.

106894 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BOBBY NIX, II

Affirmed.

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

KEY WORDS: *Crim.R. 32(B); advisement of appellate rights; harmless error.*

Trial court's failure to advise defendant of appellate rights was harmless error. Because defendant's pro se motion to file a delayed appeal was granted and counsel was appointed to represent defendant in his appeal, defendant was not prejudiced by the trial court's failure to advise him of his appellate rights.

106997 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
THE HUNTINGTON NATIONAL BANK v JAMES A. CADE, ET AL.

Affirmed.

Mary Eileen Kilbane, P.J., Eileen T. Gallagher, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Sheriff's sale; foreclosure; confirmation of decree; final order; assignment of bidder; R.C. 2329.30; contempt.*

Judgment affirmed. Trial court's judgments denying defendant's motion to assign bidder and finding defendant in contempt was proper. This court has previously found that an assignment is not proper postconfirmation of the sale because the confirmation of the sheriff's sale is a special proceeding and is a final appealable order under R.C. 2505.02(B)(2). Once the trial court confirms the sale, the order of confirmation becomes dispositive as to the propriety of the sale and the sale confirmation procedures unless the trial court

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properly vacates the confirmation pursuant to Civ.R. 60(B). Here, the defendant's motion to assign or substitute a new bidder was filed two months after the trial court had already issued the decree of confirmation of the sale. This decree was a final order, and the bid had been accepted, closed, and confirmed. Because the bidding process was closed and the bid was confirmed, the bid could no longer be assigned. In addition, a review of the record reveals that defendant did not move to vacate the confirmation under Civ.R. 60(B). Therefore, defendant could not assign the bidder postconfirmation of the sale. Moreover, under R.C. 2329.30, the trial court may issue a contempt order if the purchaser fails to timely pay the remainder of the balance after the sheriff's sale. Here, the defendant had not paid the remainder of the balance more than four months after the sheriff's sale.

107062 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: RA.E., ET AL.

Affirmed.

Mary J. Boyle, J.; Melody J. Stewart, P.J., concurs; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *Permanent custody; R.C. 2151.414; best interest of the child; standing.*

The juvenile court's decision awarding permanent custody to Cuyahoga County Division of Children and Family Services was affirmed. CCDCFS presented clear and convincing evidence that it was in the children's best interest to be placed in the permanent custody of the agency. Despite having nearly two years to do so, mother did not substantially comply with the requirements of her case plan. Further, Mother did not have standing to appeal the trial court's judgment denying paternal grandmother's motion for legal custody.

107076 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANDRE MELTON

Affirmed.

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

KEY WORDS: *Former R.C. 2929.03(C)(2); life imprisonment; parole eligibility; indefinite sentence.*

The defendant's sentence under former R.C. 2929.03(C)(2) of "20 full years to life in prison" was affirmed. Although the trial court did not follow the exact wording of former R.C. 2929.03(C)(2) ("life

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imprisonment with parole eligibility after serving [20] full years of imprisonment”), the trial court did not convert a “defacto definite sentence” into an indefinite one because the defendant’s sentence was already an indefinite sentence.