

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 5

September 27, 2018

105408 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JEFFREY A. LANSKY v WILLIAM BROWNLEE, ET AL.

Affirmed.

Anita Laster Mays, J., and Sean C. Gallagher, J., concur; Mary J. Boyle, P.J., concurs in judgment only.

KEY WORDS: *R.C. 2323.51, Civ.R. 11, frivolous conduct, sanctions, attorney fees.*

The trial court did not abuse its discretion in awarding fees and sanctions under R.C. 2323.51 and Civ.R. 11, an objective and subjective inquiry respectively, in light of the individual's experience with the legal standards involved in the case and history of filing similar law suits.

A trial court has broad discretion to award sanctions and fees under R.C. 2323.51 and Civ.R. 11 and, in its considerable discretion, may reduce or deny attorney fees even where frivolous conduct exists.

106261 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

106265 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

Affirmed.

Mary Eileen Kilbane, P.J., Tim McCormack, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Motion for a new trial; Crim.R. 33; motion for mistrial; materially affect substantial right; untimely; affidavit; motion in limine; abuse of discretion; prejudice.*

Judgment affirmed. Trial court did not abuse its discretion when it denied defendant's motion for a mistrial when the alleged misconduct by the prosecutor did not materially affect defendant's substantial rights. Additionally, the trial court did not abuse its discretion when it denied defendant's motion for mistrial when the defendant was not prejudiced by the testimony in question.

CASE DECISION LIST

106262 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

106263 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

106264 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

106268 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KENSHAWN CUMMINGS

Affirmed.

Mary J. Boyle, J., Mary Eileen Kilbane, P.J., and Tim McCormack, J., concur.

KEY WORDS: *Crim.R. 11(C), voluntary, prejudice.*

The defendant's guilty plea was voluntary because the trial court engaged in a lengthy colloquy with the defendant and ensured that the defendant understood the charges against him and the constitutional rights that he was waiving by entering into a plea agreement, and the defendant did not show how he was prejudiced.

106408 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KARRIEM EASTON

Affirmed.

Eileen A. Gallagher, A.J., and Anita Laster Mays, J., concur; Mary J. Boyle, J., concurs in judgment only.

KEY WORDS: *Motion to suppress; traffic stop; Fourth Amendment.*

The trial court did not err in granting a motion to suppress evidence obtained during a traffic stop. 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 the officer's account of the circumstances of the stop lacked credibility and, therefore, the motion to suppress was properly granted.

106418 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL MCQUEEN

CASE DECISION LIST

Affirmed.

Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur; Tim McCormack, P.J., dissents with separate opinion.

KEY WORDS: *Motion to suppress, reasonable suspicion, exclusionary rule.*

The trial court did not err in granting the appellee's motion to suppress because the officers did not have reasonable suspicion to search and seize the appellee. Any evidence obtained from the unlawful search and seizure of the appellee is subject to the exclusionary rule because it was a result of the unlawful arrest of the appellee.

106469 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TAMARA AYERS TEAQUE

Reversed and remanded.

Tim McCormack, P.J., Eileen T. Gallagher, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Allied offenses; R.C. 2941.25; plain error; receiving stolen property; simultaneous possession.*

The trial court erred in not merging appellant's four convictions for receiving stolen property where the record demonstrates appellant simultaneously possessed the four firearms belonging to the same victim at the same time and location and there was no separate, identifiable harm.

106502 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ELIJAH TAYLOR

Affirmed.

Melody J. Stewart, P.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Juvenile court; mandatory bindover; prejudice.*

Juvenile court did not err by failing to conduct amenability hearing and ordering mandatory bindover because decision that found mandatory bindover of juveniles unconstitutional had been stayed. With the Ohio Supreme Court overruling its prior decision on reconsideration and upholding the constitutionality of mandatory bindover, defendant could show no prejudice from the court refusing to enforce a legal holding that the Supreme Court later overruled.

CASE DECISION LIST

106532 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT D. JOHNSON

Affirmed.

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

KEY WORDS: *R.C. 2941.25(A)/allied offenses; R.C. 2929.11(A)/maximum sentence.*

Attempted rape and aggravated burglary are not allied offenses under the facts of this case. The harm of the assault appellant committed was separate and identifiable from the harm of the aggravated burglary offense.

Testimony and evidence in the record supported the trial court's imposition of a maximum sentence for attempted rape; and the eight-year sentence was within the statutory range. The trial court did not err where it imposed a maximum sentence against appellant.

106548 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SONIA THOMAS v PNC BANK, N.A.

Affirmed.

Melody J. Stewart, P.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Disability; discrimination; perceived; prima facie; transitory and minor.*

A plaintiff claiming disability discrimination cannot make out a prima facie case of being perceived as disabled if the plaintiff's injuries are transitory and minor — defined under federal law as an impairment with an actual or expected duration of six months or less. Although plaintiff-employee had been placed on disability leave after breaking bones in both hands, her injuries healed and she returned to work in six weeks. The court did not err by directing a verdict in favor the defendant-employer because the plaintiff's injuries were thus transitory and minor, excluding her from a "perceived as" disabled discrimination claim.

106600 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES E. LINDER, JR.

Affirmed.

Larry A. Jones, Sr., J., Eileen A. Gallagher, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Ineffective assistance of counsel; motion to suppress; Crim.R. 29/motion for acquittal; sufficiency; manifest*

(Case 106600 continued)

weight; allied offenses; speedy trial.

Although appellant's testimony opened the door to raise questions about his criminal past, appellant otherwise failed to show that the outcome of the trial would have been different; the detective's testimony was proper where he did not testify to the credibility of any of the witnesses, and his rebuttal testimony was solely for the purpose of refuting evidence presented by the defense; appellant presented nothing definitive as to what a witness would have testified to had she been subpoenaed. Appellant has failed to show that his trial counsel was ineffective.

Suppression testimony and review of the police interrogation tape supported the trial court's denial of appellant's motion to suppress.

Evidence that a violent and prolonged confrontation occurred and the medical condition of the victim was sufficient to sustain appellant's attempted murder and felonious assault convictions, and those convictions were not against the manifest weight of the evidence.

Where the physical assault of the victim ended and the kidnapping of the victim began, two separate offenses occurred and for merger purposes were not allied offenses.

Appellant failed to show that his statutory or constitutional speedy trial rights were violated. The trial court did not err in denying appellant's motion to dismiss.