

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 15, 2019

107352 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOSEPH RIFFLE

Affirmed.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Search warrant; motion to suppress; ineffective assistance of counsel; Miranda rights; inevitable discovery doctrine; Brady violation; anonymous tip; motion in limine; introduction and presentation of firearms.*

Pursuant to the execution of a valid search warrant, police officers found marijuana and firearms in defendant's home that led to his subsequent convictions. Defendant was not prejudiced by ineffective assistance of counsel when trial counsel failed: (1) to file a motion to suppress evidence obtained during the execution of a search warrant, (2) to obtain a copy of an anonymous Crime Stoppers email stating defendant was allegedly growing marijuana in his backyard, and (3) to file a motion in limine preventing the introduction and presentation of multiple firearms to the jury.

107355 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SUSAN POLLOCK, ET AL. v TRUSTAR FUNDING, LLC, ET AL.

107679 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SUSAN POLLOCK, ET AL. v TRUSTAR FUNDING, LLC, ET AL.

Affirmed.

Michelle J. Sheehan, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Settlement agreement; post-default litigation.*

The trial court did not err in enforcing the parties' original settlement agreement when the evidence did not support appellant's contention that a new settlement agreement was reached by the parties subsequent to appellees' default under the original settlement agreement.

107401 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
C.S.J. v S. E. J.

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Affirmed.

Patricia Ann Blackmon, P.J., Anita Laster Mays, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Civ.R. 65.1; Civ.R. 36; R.C. 3113.31; civil domestic violence protection order; service; jurisdiction.*

The trial court did not abuse its discretion in denying appellant's request to deem matters admitted; trial court had jurisdiction over appellant in hearings on civil domestic violence protection order.

107567	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v TABITHA JACKSON			

Affirmed in part and reversed in part.

Patricia Ann Blackmon, J., and Mary Eileen Kilbane, A.J., concur; Eileen T. Gallagher, J., dissents with separate opinion attached.

KEY WORDS: *Felonious assault; vandalism; menacing by stalking; aggravated menacing by stalking; complicity; sufficiency of the evidence; manifest weight of the evidence.*

Defendant's felonious assault convictions reversed for insufficient evidence. There was no evidence that defendant caused or attempted to cause physical harm by means of a deadly weapon. Defendant's remaining convictions affirmed. Case remanded for resentencing.

107570	SHAKER HTS. MUNI.	G	CIVIL MUNI. & CITY
ANTHONY WILLIAMS v MELISSA MCMILLIAN			

Affirmed in part, reversed and vacated in part.

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

KEY WORDS: *R.C. 5321.16(B); security deposit; wrongfully withheld; proof of damages; manifest weight.*

The trial court erred in awarding the tenant damages based on the landlord's failure to itemize the security deposit because the deposit was not "wrongfully withheld" as contemplated under R.C. 5321.16(B) and also erred in awarding damages for the tenant's decision to rent a post office box and for the cost of the food items that were lost because of a malfunctioning refrigerator. The judgment in favor of the landlord based on unpaid rent and damage to the property was not against the weight of the evidence.

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107646 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ISIAH B. HALE

Affirmed and remanded.

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

KEY WORDS: *Double jeopardy; plain error; ineffective assistance of counsel; conflict of interest; prior representation of codefendant; R.C. 2317.02(A)(1); attorney-client privilege; voluntary disclosure of attorney-client communications; waiver; Prof.Cond.R. 1.6; Crim.R. 29(A); sufficiency of the evidence; manifest weight of the evidence; R.C. 2929.14(C)(4); consecutive sentence findings; sentencing journal entry; nunc pro tunc.*

Defendant's convictions did not violate double jeopardy. Because jeopardy did not attach until jury was empaneled and sworn, charges against defendant in prior case could be dismissed and he could be reindicted. Defendant was not denied effective assistance of counsel based on defense counsel's prior representation of codefendant on similar charges. Defendant did not show an actual conflict of interest or that the result of defendant's trial was adversely affected by any conflict of interest. Defendant chose to retain defense counsel after he successfully represented codefendant and knowingly and expressly waived any potential conflict of interest arising from defense counsel's successive representation of defendant and codefendant. Trial court did not err in allowing former defense counsel to testify regarding defendant's claim that former counsel told defendant to lie to police and the court in order to obtain plea deal.

Defendant's prior testimony regarding his communications with his former attorneys waived attorney-client privilege. Defendant's convictions and guilty findings for murder, aggravated robbery, having a weapon while under a disability and perjury were supported by sufficient evidence and were not against the manifest weight of the evidence. Trial court made the requisite findings for imposing consecutive sentences at the sentencing hearing but failed to incorporate all of those findings in its sentencing journal entry. Case remanded for the trial court to issue a nunc pro tunc order correcting the consecutive-sentence findings made in its sentencing journal entry to conform to the consecutive sentence findings made at the sentencing hearing.

107695 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TIFFANY THOMPSON v CITY OF LYNDHURST, ET AL.

Affirmed.

Larry A. Jones, Sr., J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *R.C. 2953.321/sealed criminal records; subject-matter jurisdiction; termination of employment; 42 U.S.C. 1983 and R.C.*

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(Case 107695 continued)

2744.02(a)(1)/ immunity; implied contract; breach; summary judgment.

A party cannot raise for the first time on appeal arguments that were not presented in the trial court. Appellant failed to plead in her complaint allegations that appellee violated her rights in violation of public policy and that appellee violated her rights by using privileged and sealed records in violation of 42 U.S.C. 1983 and the Ohio Constitution to terminate her employment. Those two issues are not properly before this court.

The trial court did not err in granting appellee's motion for summary judgment. Appellant failed to exhaust her administrative remedies and further failed to allege any statutory claims. The trial court lacked subject-matter jurisdiction where appellant's claims were subject to a collective bargaining agreement.

Appellant failed to plead a violation of 42 U.S.C. 1983. Nonetheless, under R.C. Chapter 2744, appellee is a political subdivision, and appellant failed to establish any exceptions that would apply here and summary judgment was properly granted on this issue.

Appellant provided no evidence that the detective acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The trial court did not err in granting summary judgment on this issue.

107720 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANGEL RODRIQUEZ

Affirmed.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Bias; prejudiced judge; due process; agreed sentencing range.

Sentence affirmed where there was no evidence of judicial bias or prejudice against the defendant.

Sentence imposed by the court was authorized by law and jointly recommended by the parties and, therefore, not subject to appellate review.

107798 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
NANCY L. STRATTON v ROBERT B. STRATTON

Affirmed.

Mary Eileen Kilbane, A.J., Anita Laster Mays, J., and Raymond C. Headen, J., concur.

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(Case 107798 continued)

KEY WORDS: R.C. 3105.171; equal division of marital property; inequitable.

R.C. 3105.171 directs a trial court to equitably divide the parties' marital property. An equitable division of marital property generally involves an equal division of marital property. However, if an equal division of marital property would be inequitable, the court shall not divide the marital property equally but instead shall divide it between the spouses in the manner the court determines equitable.

In order to determine what is equitable, the trial court must consider the factors outlined in R.C. 3105.171(F). Such factors include, among others, the duration of the marriage, the assets and liabilities of the spouses, tax consequences of the property division, any retirement benefits of the spouses, and any other factor the court expressly finds to be relevant and equitable.

107814 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JAWAN COLLINS

Reversed and vacated.

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

KEY WORDS: *Misdemeanor; violation; failure to comply; building department; plea; not guilty; admission; factual allegations; R.C. 2937.07; explanation of circumstances; proffer; procedural; conviction; reversed; vacated.*

Reversed the trial court's judgment and vacated appellant's conviction for failure to comply with an order of the Cleveland Building Department. Trial court erred by accepting appellant's "no contest" plea when factual allegations in the complaint stated that notice of the violations was sent to another person and the record demonstrated that appellant did not receive proper notice of the violations. The explanation-of-circumstances requirement in R.C. 2937.07 affords a procedural protection and permits the court to find a defendant not guilty when the facts of the case do not rise to the level of a criminal violation.

107816 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v CHRISTOPHER R. PERKINS

Affirmed.

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

KEY WORDS: *Assault; petty theft; insufficient evidence; manifest weight; ineffective assistance of counsel.*

Judgment affirmed. The failure of trial counsel to move for a

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(Case 107816 continued)

judgment of acquittal under Crim.R. 29 does not constitute ineffective assistance of counsel when the state's case-in-chief links the defendant to the crimes of which he is accused. Defendant's convictions are not against the manifest weight of the evidence when the trial court weighed the strength and credibility of the evidence presented and the inferences reasonably drawn therefrom, and found defendant guilty.

107861 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
EASTON TELECOM SERVICES, LLC v VILLAGE OF WOODMERE, ET AL.

Affirmed.

Michelle J. Sheehan, J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, P.J., concurs (with separate concurring opinion attached).

KEY WORDS: Summary judgment; Civ.R. 56(C); R.C. 3.12; personal liability; construction or repair; public institution; public records request; R.C. 149.43; mandamus; statutory damages; attorney fees; reasonable period of time; breach of contract; promissory estoppel; municipality.

The village's former mayor is not personally liable on a contract he signed without legislative authority for internet services on behalf of the village. R.C. 3.12 is not applicable to the mayor because the agreement does not relate to the construction, improvement, or repair of a building, nor does it relate to the management of a public institution. Plaintiff-appellant is not entitled to statutory damages or attorney fees under R.C. 149.43 because the village responded to the public records request within a reasonable period of time. An officer of a municipality has only the powers conferred by the Constitution, statutes, and charter; no recovery can be had on a contract entered into contrary to one or more of the legislated requirements; a municipality is not liable on an implied contract; and an individual or entity entering into a contract with a municipality is on constructive notice of the statutory limitations on the power of the official or the agent of the municipality. Because the former mayor lacked the legislative authority to contract for internet services exceeding \$5,000, plaintiff-appellant's claims of breach of contract and promissory estoppel against the village fail. Summary judgment in favor of the former mayor and the village was proper.

107864 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DAVID HOWELL, JR. v PARK EAST CARE AND REHABILITATION, ET AL.

Affirmed.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

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(Case 107864 continued)

KEY WORDS: Law-of-the-case doctrine.

In a prior appeal, this court conclusively determined the law applicable to appellants' evidentiary privilege claims and remanded the case to the trial court to conduct an in camera review of the documents pursuant to our findings. The trial court conducted a review and issued the judgment underlying the current appeal. The instant appeal reiterates the same issues addressed in the prior opinion. There has been no substantive change in law or facts. Thus, the law-of-the-case doctrine applies.

107871 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOHN P. GOSSETT

Affirmed and remanded.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Crim.R. 11; nature of offense and penalties; sentencing; R.C. 2929.14(C)(4); consecutive-sentence; nunc pro tunc.*

The trial court properly advised defendant of the constitutional and nonconstitutional rights that he was waiving by entering the guilty plea, and the guilty plea was knowingly, voluntarily, and intelligently entered. The trial court made all required findings before imposing consecutive sentences but the case was remanded for nunc pro tunc correction of sentencing entry to include findings.

107918 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SANDRA STIH

Affirmed.

Raymond C. Headen, J., and Larry A. Jones, Sr., J., concur; Mary Eileen Kilbane, A.J., dissents with separate opinion.

KEY WORDS: *R.C. 2953.08(G)(2); telecommunications fraud; R.C. 2929.11; R.C. 2929.12; contrary to law.*

The defendant's sentence was not contrary to law where it was within the statutory range and the trial court considered R.C. 2929.11 and 2929.12.

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107930 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JOHN JOHNSON

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Domestic violence; sufficiency of evidence; manifest weight of evidence; Confrontation Clause; harmless error.*

Although the victim did not testify at trial, the defendant's conviction for domestic violence was supported by sufficient evidence and not against the manifest weight of the evidence because, even assuming that the police officer's hearsay statements regarding the victim's identification of the defendant as the perpetrator were admitted in violation of the Confrontation Clause, their admission was harmless error because there was significant and sufficient other evidence that established the defendant's identity as the assailant.

108038 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: S.V.K., ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Dependent; abused; child; temporary custody; complaint; permanent custody; parental rights; best interests; reasonable time; case plan; substance abuse; housing; continuance; abuse of discretion.*

The trial court did not abuse its discretion in denying trial counsel's motion for a continuance and proceeding with the permanent custody hearing in Mother's absence. The grant of permanent custody of the child to the Cuyahoga County Department of Children and Family Services was in the child's best interests. While Mother successfully completed portions of her case-plan objectives, her ongoing conduct has demonstrated that she has not benefitted from those services.