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Court of Appeals, Eighth Appellate District

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February 14, 2019

106410 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DORIAN BROWN

Reversed and remanded.

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

KEY WORDS: *Conspiracy to commit trafficking in persons; R.C. 2950.01(A)(11)(a); Tier II sex offender; plea colloquy; Crim.R. 11(C)(2)(a); advisement of sex offender classification; substantial compliance; complete failure to comply.*

Defendant's guilty plea to conspiracy to commit trafficking in persons was void where trial court failed to advise defendant during the plea colloquy that he would be required to register as a sex offender as a consequence of his guilty plea. Trial court's omission of any reference to sexual offender classification at defendant's plea hearing constituted a complete failure to comply with Crim.R. 11.

106649 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TIMOTHY S. SHELIN

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Murder; aggravated arson; motion in limine; other acts evidence; due process; fair trial; abuse of discretion; Evid.R. 404(B); identity; modus operandi; harmless error; Crim.R. 52(A); sufficiency; Crim.R. 29; circumstantial evidence; serious physical harm; manifest weight; hearsay; Evid.R. 801; Evid.R. 802; authentication; Evid.R. 901; right to confrontation; video testimony; motion to dismiss; speedy trial; R.C. 2945.71; tolling; R.C. 2945.72; preindictment delay; motion for a mistrial; Brady violation; exculpatory evidence; Crim.R. 16; consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08.*

Appellant's convictions for murder and aggravated arson and the trial court's sentence are affirmed. The trial court did not err by denying appellant's motion in limine, and appellant's rights to due process and a fair trial were not violated by the trial court's admission of other acts evidence. Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence. The trial court did not err by admitting evidence that was not properly authenticated or inadmissible hearsay. The trial court did not err in permitting a state's witness to testify remotely, and appellant's constitutional right to confront the state's witness was not violated. The trial court did not err by denying defense counsel's motions to dismiss or motions for a mistrial. The trial court did not err in imposing consecutive sentences.

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106787 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARK RAFTER

Affirmed.

Stephen A. Yarbrough, J.,* Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

*(Sitting by assignment: Stephen A. Yarbrough, J., retired, of the Sixth District Court of Appeals).

KEY WORDS: *Aggravated murder; prior calculation and design; gruesome photographs; prosecutorial misconduct; bad acts.*

State presented sufficient evidence of purpose to kill with evidence that the suicidal defendant, driving the wrong way on an interstate highway while traveling at maximum speed, swerved into the victim's lane in order to kill himself, knowing that a collision with another vehicle that was severe enough to cause his death would surely cause the death of the driver of the other vehicle.

Photographs of the victim in her car immediately after a collision were gruesome, but nevertheless relevant to prove the defendant's intent to kill in that they depicted the force of the collision, thus proving the defendant's intent to kill the victim.

106858 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LASHAUN NELSON

Affirmed.

Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur; Mary J. Boyle, P.J., concurs in judgment only.

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C)(4); R.C. 2953.08; contrary to law; R.C. 2929.11; R.C. 2929.12; R.C. 2929.14.*

The trial court did not err in imposing consecutive sentences, and appellant's aggregate five-year prison sentence is not contrary to law.

106944 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JERMAINE REID

Affirmed.

Eileen T. Gallagher, J., Mary Eileen Kilbane, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Sentencing; psychiatric report; reversible error;*

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mental health; record; mitigation; judicial release; appointed counsel; jurisdiction.

The trial court did not commit reversible error by failing to directly reference the defendant's psychiatric report during the sentencing hearing. The trial court did not err in denying Reid's motion for the appointment of counsel to represent him during the judicial release proceedings.

106973 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY LETT

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: Sufficiency; manifest weight; consecutive sentences; penalty-enhancing specifications; firearm specifications; felonious assault; knowingly; credibility; convicted felons.

There is sufficient evidence to support felonious assault conviction where defendant knowingly caused serious physical harm to the victim by creating the circumstances that led to the victim's foreseeable injury.

Defendant's convictions are not against manifest weight of the evidence where victims' testimony was credible even though they were both convicted felons and there was a minor inconsistency between their testimonies.

Trial court was not required to make findings required by R.C. 2929.14(C)(4) to impose consecutive sentences on firearm specifications because firearm specifications are penalty-enhancing provisions rather than criminal offenses and are governed by other sentencing provisions.

106994 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ESTARLING MELENDEZ

Affirmed.

Kathleen Ann Keough, J., and Anita Laster Mays, J., concur; Mary Eileen Kilbane, A.J., dissents with separate opinion.

KEY WORDS: Withdraw guilty plea; postsentence; postrelease control; allocution.

A motion to withdraw a guilty plea is treated as a postsentence motion under Crim.R. 32.1 when the motion attacks the failure to

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comply with statutory requirements regarding the imposition of postrelease control. Defendant could not demonstrate manifest injustice by the trial court's refusal to consider the oral postsentence motion to withdraw guilty plea. Any error by the trial court in not affording the defendant the right of allocution was harmless because the sentence imposed was statutorily mandated, involving no judicial discretion.

107001 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARDELL DOYLE

Reversed in part, vacated in part, and remanded.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Raymond C. Headen, J., concur.

KEY WORDS: Unduly suggestive identification; Evid.R. 901; authentication; manifest weight of the evidence; speedy trial; void sentence.

The trial court did not rely on what was deemed an unduly suggestive in-court identification during a bench trial. Further, the evidence admitted at trial was properly authenticated and identified in the record and the conviction is not against the weight of the evidence. The sentence imposed for a firearm specification attendant to a merge offense is void.

107034 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
EAST CLEVELAND FIREFIGHTERS, ET AL. v CITY OF EAST CLEVELAND, ET AL.

Affirmed in part; reversed and remanded in part.

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

KEY WORDS: Res judicata; R.C. 2705.03/contempt hearing.

Appellants failed to present issues of the trial court granting appellees' motions for temporary restraining order, show cause hearing, and the award of sanctions in appellants' original appeal. Those issues are now barred by the doctrine of res judicata. It was error, however, where the trial court granted appellees' latest motion to reduce sanctions to judgment without conducting a hearing.

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107056 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TREASURER OF CUYAHOGA COUNTY, OHIO v
ROBSHIR PROPERTIES, LLC, AN OHIO LIMITED LIABILITY

107289 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TREASURER OF CUYAHOGA COUNTY, OHIO v ROBSHIR PROPERTIES, LLC, ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Mary J. Boyle, P.J., and Stephen A. Yarbrough, J.,* concur.

*(Sitting by assignment: Retired Judge Stephen A. Yarbrough of the Sixth District Court of Appeals.)

KEY WORDS: *Civ.R. 60(B); meritorious defense; foreclosure; forfeiture; R.C. 5721.40; R.C. 5721.37; R.C. 5723.01; final appealable order; R.C. 2505.02; tax certificate holder.*

Appellant failed to establish the existence of a meritorious defense or claim to present if relief was granted, and thus, appellant is not entitled to relief from judgment.

107064 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMETRIUS CLARDY

Affirmed.

Raymond C. Headen, J., Sean C. Gallagher, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Consecutive sentences; R.C. 2929.14(C).*

The trial court made the requisite findings pursuant to R.C. 2929.14(C) before imposing consecutive sentences. The record contains evidence supporting these findings and is sufficient for this court to conclude that the sentencing court engaged in the required analysis before imposing consecutive sentences.

107070 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v COURTNEY WILLIS

Affirmed.

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

KEY WORDS: *Speedy trial; joinder.*

The trial court did not err when it denied the defendant's motion to sever three separate burglary offenses into separate trials because

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the evidence of each burglary was simple and direct. Defendant's speedy trial rights were not violated because the state brought him to trial within the statutory time to do so.

107075 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KEYRON THOMAS

Affirmed.

Eileen T. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: Sentence; purposes and principles; seriousness and recidivism factors.

Defendant's sentence was consistent with law even though it was more than the minimum sentence because the record showed that the court considered relevant sentencing provisions and the court's findings were supported by the record.

107088 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GARY R. KESLAR

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Guilty plea; Crim.R. 11; restitution; abuse of discretion; R.C. 2929.18; competent and credible evidence; ineffective assistance of counsel.

The defendant's guilty plea was knowing, intelligent, and voluntary where the court informed him of the rights he would be waiving. The court was not required to provide additional explanation of these rights. The court's imposition of restitution was not an abuse of discretion where it was supported by competent and credible evidence. The defendant did not receive ineffective assistance of counsel where counsel did not object to a valid imposition of restitution.

107095 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DIKISHA TAYLOR, ET AL. v CITY OF CLEVELAND

Affirmed.

Mary Eileen Kilbane, A.J., and Eileen T. Gallagher, J., concur; Sean C. Gallagher, J., dissents (See separate dissenting opinion).

KEY WORDS: *Motion for summary judgment; political subdivision immunity; R.C. Chapter 2744; exceptions to political immunity; R.C. 2744.02(B)(3); negligent failure to keep roads in repair.*

Judgment affirmed. Trial court’s denial of City’s summary judgment was proper. Genuine issues of material fact exist concerning whether the City was negligent by failing to maintain the road under R.C. 2744.02(B)(3) when the evidence demonstrates that 24 hours before the plaintiffs’ sinkhole incident, the City was aware of a water main break 200 feet from where the plaintiffs were injured.

107111	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID L. BUCHANAN			

Affirmed.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Guilty plea; motion to dismiss; preindictment delay; motion to sever; denied; moot; waived; actual prejudice; plea; voluntarily; misstatement; sentencing; evidence.*

By entering a guilty plea, appellant waived claimed errors regarding his motion to dismiss for preindictment delay; and notwithstanding the foregoing, appellant failed to demonstrate actual prejudice. Appellant’s plea was not found to have been involuntarily entered where there was no evidence that a victim had in fact died and where appellant entered his plea prior to any ruling on his motion to dismiss and his motion to sever.

107138	CLEVELAND MUNI.	C	CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v ANTOINE D. DAVIS			

Affirmed.

Raymond C. Headen, J., Eileen T. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: *Reckless operation of a motor vehicle; minor misdemeanor; speedy trial; R.C. 2945.71; statute of limitations; sufficient evidence.*

No speedy trial violation occurred where the defendant’s initial trial date for a minor misdemeanor was within 30 days of the service of summons and continued at defendant’s request. Defendant’s conviction for reckless operation was supported by sufficient evidence where the evidence demonstrated that he was driving between traffic lanes with his car door open.

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107177 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT L. TOWNSEND

Affirmed.

Michelle J. Sheehan, J., Larry A. Jones, Sr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Trafficking; R.C. 2925.03(A)(2); possessing criminal tools; R.C. 2923.24(A); marijuana; sufficient evidence; baggies; scale; manifest weight.*

Sufficient evidence supported the appellant's conviction for trafficking in violation of R.C. 2925.03(A)(2) and possessing criminal tools in violation of R.C. 2923.24(A) where the police officers discovered, after a search of a vehicle, a large amount of marijuana in a large Mason jar and three baggies, a digital scale, and additional empty baggies, and the supervising officer testified that these items are indicative of drug trafficking. Appellant's conviction was not against the manifest weight of the evidence. That there was no large sum of money also discovered does not establish appellant was not trafficking in drugs.

107256 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BOARD OF HEALTH OF CUYAHOGA COUNTY, OHIO v TERESA MARIE PETRO

Affirmed.

Mary Eileen Kilbane, A.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Contempt fine; costs; bootstrapping; cruel and unusual punishment.*

Judgment affirmed. Appellant was bootstrapping in the first and second assignments of error by again attacking the judgment entry that was entered almost six years ago. The contempt fine and costs awarded by the court did not constitute cruel and unusual punishment.

107514 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: Ca. C., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; R.C. 2151.414(B); R.C. 2151.414(E); best interest.*

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Trial court's determination that appellant's children could not be returned to him within a reasonable time or should not be returned to him, and that permanent custody to the CCDCFS was in the children's best interest was not against the manifest weight of the evidence where competent and credible evidence demonstrated that in three years, appellant had failed to remedy the conditions that led to the removal of the children, demonstrated a lack of commitment to them, and abandoned them, and the custodial history of the children and their need for a legally secure placement demonstrated that permanent custody was in their best interest.

107596 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVEION PERRY

Affirmed.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Raymond C. Headen, J., concur.

KEY WORDS: Res judicata; vacate; withdraw; guilty pleas; direct appeal; successive motion; vexatious.

Trial court's denial of appellant's motion to vacate his pleas was affirmed. Res judicata barred appellant's claims because they were or could have been raised on direct appeal or in his prior postsentence motion to withdraw his pleas pursuant to Crim.R. 32.1. Appellant warned about being a vexatious litigator.

107625 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
HARBOUR LIGHT CONDOMINIUM NO. 3 ASSOCIATION v
UNKNOWN HEIRS OF DONALD LOUIS GENTILE, ET AL.

Reversed and remanded.

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

KEY WORDS: Lien priority; foreclosure; condominium owners' association; unpaid assessments; R.C. 5311.18(A); R.C. 5311.18(B)(1); lien effective when recorded; subsequently arising; R.C. 5301.25(A); constructive notice.

The trial court's judgment entry and decree of foreclosure was reversed with respect to the distribution of assets. The defendant's mortgage on the property was superior to the condominium owners' association's lien on the property because the defendant's mortgage was recorded before the association's lien. Although R.C. 5311.18(B)(1) states that condominium owners' associations' liens take priority over all other liens subsequently arising except for tax liens and first recorded mortgages, associations must still record their liens for them to be effective. R.C. 5311.18(A)(3) explicitly

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states that an association's lien for unpaid assessments is effective when it is recorded in the county recorder's office. Thus, the association's lien in this case was not effective until it recorded it, which was well after the defendant's lien had been recorded. R.C. 5301.25(A) also states that "all deeds and instruments of writing properly executed for the conveyance or encumbrance of lands" shall be recorded. This law applies to condominium associations' liens as well. Recording a lien gives all persons dealing with the land constructive notice of the conveyance or encumbrance to prospective purchasers and protects the interests of the lienholder by giving the lienholder priority of interest in the property.