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Court of Appeals, Eighth Appellate District

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January 17, 2019

106169 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CARL O. LAVETTE III

Affirmed.

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

KEY WORDS: *Trial; self-representation; untimely; invoke; other-acts evidence; abuse of discretion; harmless error; cumulative; less restrictive evidentiary alternative; firearm specification; manifest weight; storage fee; forfeiture; standing; third party; codefendant; contrary to law; similar offenders; inconsistent sentence.*

Defendant's request to represent himself in the middle of trial was untimely and, therefore, did not properly invoke the right to self-representation. The trial court abused its discretion by allowing the state to introduce other-acts testimony. However, the error was harmless given the overwhelming evidence of defendant's guilt. Defendant's firearm specifications are not against the manifest weight of the evidence. Defendant lacked standing to contest storage fees related to a third party. The trial court did not act clearly and convincingly contrary to law by imposing a greater sentence on defendant than his codefendant.

106228 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ULOMA WALKER-CURRY

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Police officer's testimony; defendant's truthfulness; harmless error; motion for mistrial.*

Defendant's convictions for aggravated murder and conspiracy affirmed. Error in admitting police officer's testimony regarding defendant being deceitful deemed harmless, because of substantial evidence of guilt. Defendant failed to show that a fair trial was impossible; therefore, court did not err by denying motion for mistrial.

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106753 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRENCE THOMAS KILBANE

Affirmed.

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

KEY WORDS: *Domestic violence; self-defense; nondeadly force; manifest weight of the evidence; ineffective assistance of counsel.*

Trial court applied correct standard for establishing claim of self-defense where the defendant used nondeadly force.

Defendant's domestic violence conviction was not against the manifest weight of the evidence where evidence showed that the defendant created the situation that gave rise to the affray.

Trial counsel was not ineffective even though he erroneously suggested that the defendant might have a duty to retreat where there was no evidence that the trial court applied the wrong standard for determining a claim of self-defense and the evidence showed that the defendant created the situation that gave rise to the fight.

106834 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RAED A. SALTI

Affirmed in part; reversed in part.

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

KEY WORDS: *Sever multiple counts; Crim.R. 8(A); Crim.R. 14; Evid.R. 404(B); modus operandi; "other acts" evidence; ineffective assistance of counsel; relevant evidence; unfair prejudice; probative value; hearsay; voir dire; cumulative error; sufficient evidence; manifest weight of the evidence.*

Trial court's failure to sever multiple counts against eight victims was not plain error where the evidence related to the counts was simple and direct, and the evidence related to the separate counts would have been admissible at the different trials if the counts had been tried separately.

Trial counsel was not ineffective for failing to seek a severance of multiple counts, objecting to evidence or making a more substantial argument in support of a motion for acquittal where the outcome of the trial would not have changed even if counsel had done these things.

Since the only error identified on appeal related to a harmless error, the cumulative error doctrine was inapplicable.

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Four counts of extortion relative to four victims were not supported by sufficient evidence where there was no evidence that the defendant threatened to expose material that would subject the victims to ridicule, hatred, contempt, or loss of reputation to induce them to commit an unlawful act. There was also insufficient evidence of a furthermore finding that a victim was under 18 years old at the time of a kidnapping offense. The remaining convictions were supported by sufficient evidence and by the manifest weight of the evidence.

106862 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTWAN D. WILSON

Affirmed.

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

KEY WORDS: Sentencing; purposes and principles of felony sentencing; seriousness and recidivism factors; liens; paper terrorism.

Thirty-month sentence was not contrary to law and was supported by the record where the defendant's failure to take responsibility for his action and extensive criminal record indicated he would likely reoffend.

106885 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JOY NEVILLE

Affirmed.

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

KEY WORDS: R.C. 2929.15(B)(1)(c); Am.Sub.H.B. No. 49; community control sanctions; violation; fifth-degree felony; 90-day maximum sentence; technical violation.

The trial court's judgment sentencing defendant to 12 months in prison for violating the terms of her community control sanctions is affirmed. Defendant failed to report to the probation department after she was sentenced. Defendant's failure to report to the probation department was not a technical violation under the recently enacted R.C. 2929.15(B)(1)(c). Thus, the trial court was not limited to sentencing defendant to 90 days in prison as required under R.C. 2929.15(B)(1)(c)(i) when a defendant commits a technical violation of his or her community control sanctions.

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106886 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CORTNEY E. STANKO

Reversed.

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

KEY WORDS: *R.C. 2929.15; fourth-degree felony; technical violation of community control sanction.*

Following defendant's conviction for fourth-degree felony, trial court erred in imposing 30-month sentence for her violations of community control that were based upon defendant's "failure to report since 07-11-17, failure to attend (AA/NA) meetings, and testing positive for alcohol on 07-11-17." Because the violations were "technical." Therefore, under R.C. 2929.15(B)(1)(c)(ii), a maximum sentence of 180 days of imprisonment could be imposed.

106887 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CIERA C. CATRON-WAGNER

Vacated and remanded.

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

KEY WORDS: *R.C. 2929.15(B)/penalties for violation of community control sanctions; technical violations.*

Appellant's violations of her community control sanctions were technical violations and not new criminal offenses. The trial court's 17-month sentence was contrary to law.

106893 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDWARD A. SMITH

Sentence vacated; remanded for resentencing.

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

KEY WORDS: *Sentence; contrary to law; void; authority; R.C. 2953.08; aggravated murder; R.C. 2929.03(A); statutory language; legislative intent; parole; eligible; indefinite sentence.*

Because the trial court imposed a sentence that does not comport with the statutory language set forth in R.C. 2929.03(A), the trial court exceeded its authority in sentencing.

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106957 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
TERRY L. JOCHUM, ET AL. v EZIO LISTATI, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; breach of legal services agreement; Civ.R. 56(C); conclusory affidavit.*

Trial court did not err in granting summary judgment in favor of law firm on its counterclaim against former client for unpaid legal fees and expenses. Law firm met its burden under Civ.R. 56(C), presenting evidence of specific facts in the record demonstrating its entitlement to summary judgment on its counterclaim. However, client did not meet her reciprocal burden of pointing to evidence of specific facts in the record demonstrating the existence of a genuine issue of material fact for trial, as required to defeat summary judgment. General, conclusory statements in client's affidavit, unsupported by specific facts or corroborating evidence, did not create a genuine issue of fact as to whether law firm billed client for services client claimed she did not want or need or which were not actually provided.

107009 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
JACQUELINE GRIDIRON v THE CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Left wrist; sprain; tear; effusion; expert; opinion; report; workers' compensation; condition; causation; abuse of discretion; surprise; ambush; supplement; sanction; motion in limine.*

This case does not present the type of unfair surprise or trial by ambush envisioned under Civ.R. 26(E) and Loc.R. 21.1. The trial court did not abuse its discretion by permitting the defense expert to testify regarding the conditions alleged in plaintiff's Ohio Workers' Compensation claim.

107015 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHAD X. PADGETT

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107016 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHAD X. PADGETT

Affirmed.

Eileen T. Gallagher, P.J., Patricia Ann Blackmon, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Information; guilty plea; postrelease control; gun specification; maximum penalty; waiver of presentment to grand jury.*

Defendant's guilty pleas were knowing, intelligent, and voluntary where court explained the mandatory nature of postrelease control and that service of three-year prison term on gun specification was required before service of sentence on underlying felony.

Defendant waived right to challenge any defects in the manner in which he waived his right to a grand jury indictment by pleading guilty to the charges.

107026 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
FREDERICK ANGE v PARKER-HANNIFIN CORPORATION

Affirmed.

Patricia Ann Blackmon, J., E.T. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Civ.R. 60(B); notification; e-filing system; abuse of discretion.*

Trial court did not err in denying plaintiff's motion to vacate summary judgment for employer where plaintiff was promptly served with employer's motion for summary judgment pursuant to the trial court's local rules for electronic filing, and did not check docket or user's notification page to learn of motion, and court ruled on it six weeks later.

107158 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LITRELL CHAPMAN

Affirmed.

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

KEY WORDS: *Motion for new trial; leave; Crim.R. 33, Loc.R. 11(D); untimely; abuse of discretion. Judgment affirmed.*

The trial court's denial of defendant's motion for a new trial was proper because the defendant did not file a motion for new trial

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within the time prescribed by Crim.R. 33 and did not seek leave from the court prior to filing the untimely motion. Additionally, the trial court did not have to wait ten days before ruling on the motion for a new trial because Crim.R. 33 does not require a scheduled reply time and the defendant did not seek leave from the trial court to file a reply to the state's opposition.

107251 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
TAMAR A. HARTMAN v DALE M. HARTMAN

Affirmed.

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

KEY WORDS: Divorce; parenting plan; jurisdiction; modification; best interests; due process; hearing; notice.

The trial court did not abuse its discretion in modifying the terms of the parenting plan. The trial court's failure to hold a full hearing on the modification order did not violate appellant's due process rights.

107301 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: L.R.D., ET AL.

Affirmed.

Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur; Patrica Ann Blackmon, J., concurs in judgment only with separate opinion.

KEY WORDS: Indian Child Welfare Act; permanent custody; temporary custody; legal custody; best interest of the child.

Trial court did not violate Indian Child Welfare Act where there was no evidence that the children were "Indian children" as defined by the act.

Order granting permanent custody to CDCFS was supported by clear and convincing evidence where evidence showed the children could not and should not be placed with either parent within a reasonable time, and permanent custody was in the children's best interest.

Trial counsel was not ineffective for failing to object to proceeding without complying with the Indian Child Welfare Act where there was no evidence that the children were "Indian children" as defined by the act.

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107371 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: C.N.

Affirmed and remanded.

Anita Laster Mays, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Nunc pro tunc.*

The state conceded that the journal entry did not reflect what the juvenile court decided at the sentencing hearing. When clerical mistakes are raised on appeal, Ohio appellate courts may remand the issue to the trial court and direct that the court correct the misstatement through a nunc pro tunc entry. The juvenile court is directed to issue a nunc pro tunc entry to correct the journal entry to reflect what was done at the sentencing hearing.

107532 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HOLLEY HENTGES

Dismissed.

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

KEY WORDS: *Anders brief, motion to withdraw, R.C. 2953.08(D), agreed sentence.*

Appellate counsel's motion to withdraw filed in compliance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), was granted and the appeal dismissed after a thorough review of the record failed to reveal any meritorious arguments for appeal. Appellant's jointly recommended sentence was authorized by law and may not be reviewed by this court pursuant to R.C. 2953.08(D).

107577 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: K.P., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody.*

In order for the juvenile court to grant permanent custody to CCDCFS pursuant to R.C. 2151.353, it must find by clear and convincing evidence one of the conditions set forth in R.C. 2151.414(B)(1), which provides:

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(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

107792 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANNY BARB

Reversed and remanded.

Larry A. Jones, Sr., J., Mary J. Boyle, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Conceded error; motion to vacate postrelease control.*

The trial court erred where it denied appellant's motion to vacate the postrelease control portion of appellant's sentence. Proper notice of postrelease control was not entered in the sentencing entry.