

CASE DECISION LIST

July 3, 2019

107285 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARQUEZ A. WILLIAMS

Affirmed.

Anita Laster Mays, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Sufficiency of the evidence, Crim.R. 29, manifest weight of the evidence, R.C. 2903.01, aggravated murder, R.C. 2923.162(A)(3), discharge of firearm on or near prohibited premises, R.C. 2941.141 and R.C. 2941.145, firearm specifications, R.C. 2923.03, complicity, aid or abet, mens rea, Evid.R. 701, Evid.R. 704, officer testimony, Evid.R. 404, other acts, jury instruction, accessory after the fact, R.C. 2929.14(B)(1)(g), allied offenses, consecutive sentence, R.C. 2941.25, merger.*

Appellant's convictions on the basis of complicity are supported by sufficient evidence and are not against the manifest weight. The jury heard the testimony of the witnesses and viewed the security camera videotapes of the area before, during, and after the shooting in this case. The video evidence depicts appellant's role as the driver of the automobile that transported the others involved with the shooting, including the shooter, to and from the scene. The jury could reasonably have determined that the stalking and execution-style killing once the victim had been incapacitated was sufficient to demonstrate the mens rea of prior calculation and design to constitute aggravated murder.

Opinion testimony by the detective that appellant was not totally forthcoming during his interview did not rise to the level of plain error where there was no objection during trial and the jury viewed the videotaped interviews. Appellant cannot demonstrate that, but for the testimony, the outcome of the trial would have been different.

The consecutive three-year sentences for the firearm specifications for the aggravated murder and discharge of firearm counts are mandatory pursuant to R.C. 2929.14(B)(1)(g). The aggravated murder and discharge of firearm counts did not merge because the decedent was the victim of the aggravated murder while the public was the victim of the illegal discharge of a firearm.

107409 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL J. JENKINS

Dismissed.

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

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(Case 107409 continued)

KEY WORDS: Motion to dismiss; preindictment delay; final appealable order; interlocutory order; R.C. 2505.02; ineffective assistance of counsel; scope of remand; law of the case.

The trial court's judgment denying appellant's motion to dismiss based on preindictment delay is not a final appealable order capable of invoking this court's jurisdiction. Accordingly, appellant's appeal is dismissed.

107419 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v OSCAR S. DICKERSON

Dismissed.

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

KEY WORDS: Motion; dismiss; preindictment delay; remand; denial; judgment; final order; subject matter jurisdiction; meaningful; interlocutory; ineffective assistance of counsel.

This court lacks jurisdiction over the trial court's denial of appellant's motion to dismiss, because the judgment did not constitute a final appealable order.

107445 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MCKALE HILL

Affirmed.

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

KEY WORDS: Restitution.

We review a trial court's decision to order restitution for abuse of discretion. Pursuant to R.C. 2929.18(A)(1), a trial court may order an offender to pay restitution to the victim's family in an amount based on the victim's economic loss as part of a felony sentence. A plain reading of R.C. 2929.18(A)(1) vests the trial court with jurisdiction to order restitution.

With respect to the amount of restitution imposed, the court must engage in a due process ascertainment that the amount of restitution bears a reasonable relationship to the loss suffered. In addition, the amount must be supported by competent, credible evidence. Further, the statute contains no statement about incorporating restitution into plea agreements.

Our review of the record reveals that there was competent and credible evidence from which the trial court was able to discern the amount of restitution to a reasonable degree of certainty. The trial

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court satisfied the statutory requirements and we find no abuse of discretion in these matters.

107518 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL J. JENKINS

Dismissed.

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

KEY WORDS: R.C. 2505.02(B)(3); final appealable order.

The state's appeal from the trial court's decision to not reinstate the appellee's convictions is not a final appealable order under R.C. 2505.02(B)(3), because the trial court did not issue an order granting a new trial.

107520 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v OSCAR S. DICKERSON

Dismissed.

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

KEY WORDS: R.C. 2505.02(B)(3); final appealable order.

The state's appeal from the trial court's decision to not reinstate the appellee's convictions is not a final appealable order under R.C. 2505.02(B)(3), because the trial court did not issue an order granting a new trial.

107680 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRANDON FRAZIER

Affirmed.

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

KEY WORDS: Sufficiency; manifest weight; jury instruction; ineffective assistance of counsel.

The victim's testimony provided sufficient evidence to substantiate a guilty verdict of rape; appellant held a position of authority over the victim and used that position of authority to lure the victim away from her father's house; appellant knew or should have known the age of the victim or was reckless in not knowing her age. Sufficient evidence was presented to convict appellant on the charges of

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kidnapping and unlawful sexual conduct with a minor.

Specificity of dates of the alleged abuse was not required and the credibility of the victim's testimony and behavior after the sexual abuse was left to the jury. Appellant's convictions were not against the manifest weight of the evidence.

The trial court's instruction to the jury on the counts of rape and attempted rape were not error. Testimony established that appellant used force to engage the victim and that there was subtle and psychological force through appellant's position of authority and filial-like relationship with the victim.

Appellant's claim of ineffective assistance of counsel on the basis that counsel failed to object to the jury instruction on force is moot.

107744 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CITIZENS BANK, N.A. v ANTHONY J. RICHER, JR., ET AL.

Affirmed.

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

KEY WORDS: Foreclosure, motion to substitute, Civ.R. 25(C), motion for summary judgment, standing.

The trial court did not err in granting plaintiff's motion to substitute a different plaintiff because the record showed that the substitute plaintiff was assigned the subject mortgage after the action was filed. The trial court did not err in granting substitute plaintiff's motion for summary judgment on the substitute plaintiff's claims and the defendant's counterclaims because there were no genuine issues of material fact, the substitute plaintiff had standing, and the substitute plaintiff was not required to comply with HUD regulations before filing its foreclosure action. Further, the defendant did not timely rescind his mortgage as he alleged, and there was no evidence that the substitute plaintiff provided false or misleading information or engaged in unfair or deceptive collection practices.

107926 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RICHARD WILSON

Affirmed.

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

KEY WORDS: Ineffective assistance of counsel, motion to dismiss, speedy trial, Crim.R. 11.

The appellant has not established a claim for ineffective assistance

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of counsel. Appellant's trial counsel was not ineffective for failure to file a motion to dismiss because the appellant's speedy trial rights were not violated. In addition, the trial court strictly complied with Crim.R. 11 when taking the appellant's guilty plea.