

CASE DECISION LIST

June 27, 2019

106744 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NAVI SANDERS

Affirmed. Decision en banc.

Raymond C. Headen, J.; Mary Eileen Kilbane, A.J., Patricia Ann Blackmon, Mary J. Boyle, Frank D. Celebrezze, Jr., Eileen A. Gallagher, Eileen T. Gallagher, Sean C. Gallagher, Larry A. Jones, Sr., Kathleen Ann Keough, Anita Laster Mays, and Michelle J. Sheehan, JJ., concur.

KEY WORDS: *Witness intimidation; R.C. 2921.04(B)(2); criminal act; prosecutorial misconduct.*

State did not have to prove beyond a reasonable doubt that a person had been murdered in order for the death to be considered a criminal act for purposes of witness intimidation. The state need only prove beyond a reasonable doubt that the defendant believed that a criminal act occurred and attempted to intimidate a witness to that criminal act.

Statement that defendant's attempt to intimidate the witnesses did not stop those witnesses from coming to court and "telling you the truth" was not a statement vouching for the credibility of the witnesses.

107167 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v STEVEN LEANNAIS

Affirmed.

Eileen T. Gallagher, P.J., and Kathleen Ann Keough, J., concur; Eileen A. Gallagher, J., dissents with separate opinion.

KEY WORDS: *Sufficiency; manifest weight of the evidence; reckless homicide; recklessness; negligence; ineffective assistance of counsel; jury instruction on accident; state's witness; closing argument.*

Reckless homicide conviction affirmed where evidence showed the defendant recklessly played with a gun while consuming alcohol.

Trial counsel was not ineffective for failing to request a jury instruction on accident where jury instruction allowed jury to acquit if it found the defendant did not act recklessly.

Trial counsel was not ineffective for failing to question state's witness about an agreement not to prosecute where such questioning would have allowed the state to introduce prior consistent statements that would have bolstered the witness's testimony and there was plenty of other material with which to

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impeach the witness.

Trial counsel was not ineffective for failing to object to state's representations of the law of recklessness and negligence where the representations were accurate and the court properly instructed the jury on those issues.

107479 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES A. PEAK

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Guilty plea; withdraw; presentence; Crim.R. 32.1; scope of hearing; claim of innocence; change of heart; Crim.R. 11; consecutive sentence; findings; R.C. 2929.14(C); supported by the record; R.C. 2953.08(G)(2).*

The trial court did not abuse its discretion in denying the appellant's presentence motion to withdraw guilty plea. The trial court's hearing sufficiently addressed the appellant's unsupported claims of innocence where appellant also conceded that he had competent counsel, he was afforded a full Crim.R. 11 hearing, and he had a change of heart. Additionally, the record reflects the trial court made the consecutive-sentence findings under R.C. 2929.14(C) and we cannot clearly and convincingly find the record does not support the findings.

107541 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEREMIAH FORD

Affirmed.

Frank D. Celebrezze, Jr., J.; Patricia Ann Blackmon, P.J., concurs in judgment only; and Eileen A. Gallagher, J., dissents with separate opinion.

KEY WORDS: *Sexual battery; manifest weight; R.C. 2907.03; knowingly; coercion; lesser-included offense.*

Appellant's convictions for sexual battery are not against the manifest weight of the evidence.

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107561 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LARRY JONES

Affirmed.

Raymond C. Headen, J., and Michelle J. Sheehan, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Sexual battery; rape; gross sexual imposition; kidnapping; other acts evidence; Evid.R. 404; R.C. 2945.59; knowingly, intelligently, and voluntarily enter guilty plea; plea-bargaining process; coerced guilty plea; withdrawal of guilty plea; sexual predator classification; R.C. 2950.01; former R.C. 2950.09(B)(3); speedy trial; R.C. 2945.71; ineffective assistance of counsel; Strickland test; break in communication with counsel.*

Defendant-appellant was indicted on five counts relating to the rape, gross sexual imposition, and kidnapping of S.D. ten years ago. Defendant-appellant accepted a plea bargain and was sentenced. On appeal, defendant-appellant challenges (1) his plea was not knowingly, intelligently, and voluntarily entered because the trial court coerced him to plead guilty; (2) the trial court abused its discretion by denying defendant's presentence motion to withdraw his plea; (3) the record does not support classifying defendant as a sexual predator, (4) the trial court erred when it denied defendant a speedy trial; and (5) he received ineffective assistance of counsel requiring a remand for further proceedings. The record does not support defendant-appellant's assignments of error and the lower court's decision is affirmed.

107614 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: E. H.

Affirmed.

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

KEY WORDS: *Motion to suppress; Juv.R. 40(D); Fourth Amendment; investigatory stop; totality of the circumstances; dispatch; identified informant; probable cause to arrest; criminal trespass; R.C. 2911.21(A)(1).*

The appellant's delinquencies for carrying a concealed weapon, having weapons while under a disability, and criminal trespassing were affirmed. The trial court did not err when it denied the appellant's motion to suppress because the officers had reasonable suspicion to stop him and investigate. The officers relied upon a dispatch where an identified, concerned citizen reported that she saw two males who "just tried to carjack" her neighbor. The concerned citizen reported the males' description as well and two officers saw them walking just minutes later. Further, the appellant's delinquency for criminal trespass was supported by

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sufficient evidence because the state presented evidence that, if believed, proved his identity beyond a reasonable doubt.

107740 BERA MUNI. C CRIMINAL MUNI. & CITY
CITY OF BERA v ALEXANDER R. TIMM

Affirmed.

Larry A. Jones, Sr., J., Patricia Ann Blackmon, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Miranda; custody; Crim.R. 12(C)(3)/motion to suppress; sufficiency; prejudicial error; Crim.R. 16/discovery/witness list; domestic violence; cumulative-error doctrine.*

Appellant's initial statement to the police was made prior to appellant being handcuffed and was an admission of physical contact with the victim. Appellant's second statement to the police, made after being handcuffed but prior to being mirandized, was not properly challenged at trial by way of a motion to suppress.

The trial court's judgment of guilty was not prejudicial error. Appellant's statement that he threw the victim to the ground was sufficient for a conviction of domestic violence.

Appellant was not prejudiced where the trial court allowed testimony from the patrolman that was on the scene the night of the incident. Appellee provided appellant with reports from the incident that included the officer's name and badge number; the criminal complaint that was signed by the officer; and footage from the officer's body camera. The city did not fail to comply with Crim.R. 16.

The cumulative-error doctrine does not apply here. None of appellant's alleged individual errors give cause for reversal.

107773 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v HAROLD SMITH

Affirmed.

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

KEY WORDS: *Attempted murder; felonious assault; domestic violence; sufficiency; manifest weight; eyewitness; stabbing.*

Appellant's convictions for attempted murder, two counts of felonious assault, and domestic violence were affirmed. In addition to eyewitness testimony, other testimony and evidence were presented linking appellant to the crimes. There was sufficient evidence to support the convictions, and the convictions were not against the manifest weight of the evidence.