

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 27, 2019

107027 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JESUS GARCIA

Reversed and remanded.

Anita Laster Mays, J., Mary Eileen Kilbane, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *App.R. 9, failure to file a complete record, substantial responsibility, App.R. 9(B)(4), appellate record, sufficiency and weight of evidence.*

Appellant appeals his convictions for several criminal charges. The trial transcript notation provides that all trial exhibits that were not contained in the record are in the custody of the state. After multiple informal requests and a sua sponte order, the state provided a portion of the missing trial exhibits accompanied by a notice of submission. The state concedes in the notice that it has exhausted all efforts to secure the missing exhibits, states that the exhibits are required to address the assignments of error; yet maintains that it is appellant's duty to provide the complete record. Pursuant to State v. Jones, 71 Ohio St.3d 293, 643 N.E.2d 547 (1994), a case may be remanded to the trial court for a hearing to determine whether the defendant is substantially responsible for the missing evidence and, if not, to grant a new trial. See also App.R. 9(B)(4) that requires that the appellant include a transcript and all relevant evidence when challenging the sufficiency or weight of the evidence.

In light of the state's concession that all efforts to locate the exhibits have already been exhausted and that the exhibits are required to address the assigned errors, a hearing to determine substantial responsibility is not required. Appellant's conviction is reversed, and the case is remanded for a new trial based on Jones.

107968 PARMA MUNI. C CRIMINAL MUNI. & CITY
CITY OF PARMA v ZACHARY P. HORKY

Vacated.

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

KEY WORDS: *R.C. 2905.05(A); criminal child enticement; unconstitutional.*

Defendant's convictions for criminal child enticement are vacated because R.C. 2905.05(A) was declared unconstitutional. Although the judgment entry of conviction does not identify which subsection of R.C. 2905.05 the defendant was found to be in violation of, the record clearly reveals that the defendant was prosecuted and

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(Case 107968 continued)

convicted for violating subsection (A).

107986	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JASMINE L. MATHIS			

Affirmed.

Mary J. Boyle, P.J., Patricia Ann Blackmon, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion to suppress; consent; sufficiency; tampering with evidence.*

There was competent, credible evidence to support the trial court's finding that the defendant voluntarily consented to the search of her cell phone, and the trial court did not err in denying the defendant's motion to suppress on that basis. The defendant's conviction for tampering with evidence was supported by sufficient evidence.

108051	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v EDITO ROSA			

Affirmed in part; vacated in part; and remanded.

Kathleen Ann Keough, J., Patricia Ann Blackmon, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Sufficiency of the evidence; rape; force; inferred; totality of the circumstances; hearsay; Evid.R. 803(4); medical diagnosis and treatment; post-arrest silence; course of investigation.*

Defendant's conviction for forcible rape upheld where sufficient evidence was presented that the victim's will was overcome by fear or duress for a rational trier of fact to infer the element of force based on the totality of the circumstances and the violence the victim endured earlier. Victim's statement made to medical personnel was properly admitted pursuant to the hearsay exception in Evid.R. 803(4) because it aided in providing medical care and treatment to the victim. Detective's testimony that the defendant did not give a statement was properly admitted because it was not elicited as substantive evidence but was mentioned in the context of the detective's description of her course of investigation.

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108125 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SOLIEL TANS, LLC., ET AL. v TIMBER BENTLEY COE, LLC., ET AL.

Affirmed.

Michelle J. Sheehan, J., Patricia Ann Blackmon, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Forcible entry and detainer; compulsory counterclaim; summary judgment; res judicata.*

Tenant's claim of damages against Landlord is barred by res judicata because it constituted a compulsory counterclaim in a prior eviction action filed by Landlord against Tenant.

108136 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LACEY KIRK

Affirmed.

Sean C. Gallagher, P.J., Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Preindictment delay; joinder; separate trials; Crim.R. 8; Evid.R. 404(B); other acts; harmless error; speedy trial; R.C. 2945.71; self-representation; weight of the evidence; sentencing; allied offenses; plain error; consecutive service; R.C. 2929.14(C)(4); Crim.R. 11; Crim.R. 12; R.C. 2953.08.*

The defendant's convictions for corruption of a minor, rape, and kidnapping are affirmed despite the single trial that incorporated other acts evidence and that occurred three years after the date the defendant was arrested. In addition, the trial court did not err in imposing the individual sentences within the statutory ranges and by ordering those sentences to be consecutively served.

108182 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES BARKER

Reversed, vacated, and remanded.

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

KEY WORDS: *Sufficiency; tampering with evidence.*

The defendant's conviction for tampering with evidence was not supported by sufficient evidence. There was no evidence at the time the defendant threw out his mattress that he knew or should have known that a proceeding or investigation was about to be or likely to be instituted.

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108226 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEE JONES

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Crim.R. 32.1; postsentence motion to withdraw guilty plea; jurisdiction.*

The trial court lacked jurisdiction to consider the merits of a motion to withdraw a guilty plea under Crim.R. 32.1 in light of the unsuccessful direct appeal.

108241 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EMMANUEL JACKSON

Affirmed.

Kathleen Ann Keough, J., and Eileen A. Gallagher, J., concur; Mary Eileen Kilbane, A.J., concurs in judgment only.

KEY WORDS: *Motion for leave; motion for new trial; Crim.R. 33; unavoidably delayed; new evidence; hearing.*

Defendant failed to prove by clear and convincing evidence that he was unavoidably delayed from timely discovering new evidence or that the evidence was unknown at the time of trial. Trial court did not abuse its discretion in denying defendant's motion for leave to file motion for new trial without a hearing.

108387 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BENEDICT DIFRANCO v CHRISTOPHER LICHT, ET AL.

Reversed and remanded.

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

KEY WORDS: *Motion to stay proceedings and compel arbitration; R.C. 2711.03; hearing.*

Trial court erred in granting motion to stay proceedings and compel arbitration without first holding a hearing pursuant to R.C. 2711.03 to determine the validity and enforceability of the arbitration clause.

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108407 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE

IN RE: D.T.

Affirmed.

Patricia Ann Blackmon, J., Eileen T. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Continuance; permanent custody; best interest of the child.

The juvenile court did not abuse its discretion in denying father's counsel's motion to continue filed on the day of trial after father left the proceedings. Trial court did not err in awarding permanent custody of child to CCDCFS where the court's findings under R.C. 2151.414(B)(1) and its analysis for the best interest of the child under R.C. 2151.414(D) were supported by clear and convincing evidence.