

CASE DECISION LIST

September 12, 2019

107200 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERIC S. NEWTON, JR.

Affirmed.

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

KEY WORDS: *Child pornography; pandering; illegal use of a minor; motion to suppress; manifest weight.*

Police officers had reasonable suspicion, supported by articulable facts, that the individuals in the vehicle were engaged in criminal activity, and therefore, the stop was justified. Because the stop was justified, probable cause existed to search the phone found in the vehicle, regardless of ownership of the phones. Newton's convictions for pandering, illegal use of a minor, and possession of criminal tools was not against the manifest weight of the evidence. The jury could reasonably infer from all of the evidence that Newton was the person responsible for placing the child pornography on his computer and his cell phone.

107365 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAVID L. MATHIS

Affirmed.

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

KEY WORDS: *Rape; gross sexual imposition; kidnapping; prosecutorial misconduct; DNA analysis; ineffective assistance of counsel; character witness; opinion testimony; victim impact evidence; harmless error; plain error; cumulative error.*

It is not misconduct for a prosecutor to refer to the defendant's specific acts during cross-examination of a character witness after the defendant put his character at issue. Such cross-examination may also include reference to defendant's prior arrest regardless of whether it lead to a conviction. Where the defendant was previously charged with domestic violence and convicted of disorderly conduct, it is a harmless error for the prosecutor to refer to an associated assault conviction that does not exist where such reference does not cause prejudice.

There is no plain error where a court admits evidence of an inconclusive DNA analysis where evidence otherwise establishes defendant's guilt.

The failure to make an objection, alone, is not enough to establish a claim for ineffective assistance of counsel. Moreover, a claim for

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ineffective assistance of counsel as part of a direct appeal cannot be predicated on evidence that is outside of the record.

Lay witness opinion testimony about child-victims of sexual abuse is not improper where the testimony is rationally based on the witness' experience and is helpful to a determination of a fact in issue.

There is no prejudicial error where a court admits evidence that the victim sought counseling after rape where the evidence was brief and not overly emotional or inflammatory. Where the conviction stands absent the testimony regarding counseling, its admission was harmless error.

Where multiple harmless errors occurred at trial, but where defendant otherwise received a fair trial and defendant's guilt was established by overwhelming evidence there is no cumulative error.

107424 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
SYLVIA JOHNSON-NEWBERRY v CUYAHOGA COUNTY CHILD AND FAMILY SERVICES, ET AL.

Affirmed.

Michelle J. Sheehan, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, P.J., concurs with separate opinion attached.

KEY WORDS: *Motion for judgment on the pleadings; Civ.R. 12(C); discrimination; R.C. 4112.02(A); R.C. 4112.01(A)(2); R.C. 4112.02(J); individual liability; aid and abet; R.C. 2744.03(A)(6)(c); motion to amend complaint; change name; final appealable order.*

The trial court's order granting plaintiff-appellee's motion to amend her complaint where the plaintiff-appellee moved to change the name of the party defendant where plaintiff-appellee demonstrated she mistakenly omitted a portion of the party's name on the complaint is not a final appealable order. We therefore have no jurisdiction to review the second assignment of error. The trial court properly denied the supervisor's Civ.R. 12(C) motion for judgment on the pleadings. R.C. 4112.02(J) expressly imposes liability on a political subdivision employee so as to trigger the immunity exception outlined in R.C. 2744.03(A)(6)(c).

107453 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MAAN YOUSEF v AMID YOUSEF, ET AL.

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Dismissal of counterclaims; harmless error; setoff;*

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unjust enrichment; motion for leave to file answer; enforceable agreement; consideration; App.R. 16(A)(7).

Although the trial court erred in dismissing a counterclaim filed on behalf of a corporate entity because of the fact that the principal filed a similar claim in another action, any error was rendered harmless by the trial court's factual findings that resolved the claims filed on behalf of the principal. The trial court did not err by considering the equity of permitting the defendant to retain a portion of the benefit conferred by plaintiff's conduct in rendering a verdict in favor of plaintiff for a reduced amount of damages. The trier of fact's conclusion that the contract failed for want of consideration was not against the weight of the evidence based on the plaintiff's evidence demonstrating a promise was made.

107702	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BENJAMIN MOORE			
108596	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BENJAMIN MOORE			
108597	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BENJAMIN MOORE			
108598	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BENJAMIN MOORE			
108599	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v BENJAMIN MOORE			

Vacated and remanded.

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

KEY WORDS: Conceded error; guilty plea; Crim.R. 11(C)(2).

The trial court failed to advise appellant of any of the Crim.R. 11(C)(2) constitutional rights. Appellant's convictions are vacated.

107828	COMMON PLEAS COURT	E	CIVIL C.P.-NOT JUV,DOM OR PRO
LASONYA J. HARRIS v CERTIFICATE OF QUALIFICATION OF EMPLOYMENT PETITION			

Reversed and remanded.

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

KEY WORDS: Petition for certificate of qualification for employment; R.C. 2953.25; abuse of discretion.

The trial court abused its discretion in denying the appellant's

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petition for a certificate of qualification for employment without setting forth its findings.

107843 ROCKY RIVER MUNI. C CRIMINAL MUNI. & CITY
CITY OF WESTLAKE v DEVON A. BLAKLEY

Affirmed.

Anita Laster Mays, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: NHTSA, HGN test, probable cause.

The trial court did not err in affirming the magistrate's decision finding that the arresting officer substantially complied with the testing standards set forth by the National Highway Traffic Safety Administration ("NHTSA") regarding administration of the HGN test upon appellant. In addition, the arresting officer had probable cause to arrest the appellant because based upon the totality of the facts and circumstances, a reasonable police officer, relying upon his training and experience, could conclude that there was probable cause to believe that the appellant was operating her vehicle under the influence of alcohol.

107852 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ANNE R. COBBIN, ET AL. v CLEVELAND CLINIC FOUNDATION, ET AL.

Affirmed.

Mary J. Boyle, P.J.; Anita Laster Mays, J., concurs; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: Motion for a new trial; error of law; vicarious liability; standard of care.

The trial court's judgment denying the plaintiffs' motion for a new trial was affirmed. The trial court's response to the jury's question during deliberations that they could not find the hospital negligent if they did not find the doctor negligent was not error. While it is true that hospitals can be vicariously liable for the negligence of its nurses even if the plaintiff did not name the nurses in the complaint, the plaintiff here failed to present evidence at trial establishing that the nurses breached their duty or violated their standard of care when caring for the plaintiff.

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107875 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DESHUN LEWIS

Affirmed in part, vacated in part, and remanded.

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

KEY WORDS: *Having weapons while under disability; R.C. 2923.13; sufficiency; Crim.R. 29; gunshot residue; manifest weight; consecutive sentences; R.C. 2929.14(C)(4).*

Appellant's conviction for having weapons while under disability was not based on insufficient evidence and was not against the manifest weight of the evidence. The trial court did not make the requisite findings in imposing consecutive sentences.

107954 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
UBS FINANCIAL SERVICES, INC. v ASSURANCE INVESTMENT MANAGEMENT, LLC, ET AL.

Affirmed.

Patricia Ann Blackmon, P.J., Frank D. Celebrezze, Jr., J., and Raymond C. Headen, J., concur.

KEY WORDS: *Charging order; creditor's lien; appointment of receiver; R.C. 2735.01(A)(7); due process; nonparties; record on appeal.*

The trial court properly appointed receiver over limited liability company to satisfy prior charging order where creditor previously obtained a charging order against debtors' interests in limited liability company; prior judgments demonstrated that the company was the judgment debtors' fraudulent transferee of assets, and the limited liability company was a party.

107955 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL MORGAN, ET AL. v BENJAMIN ROSS COHEN, ET AL.

Affirmed.

Eileen A. Gallagher, J., Mary J. Boyle, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment; "as is" sale of condominium unit; fraudulent inducement; fraudulent misrepresentation; disclosures; residential property disclosure form; R.C. 5302.30; justifiable reliance.*

Trial court did not err in granting summary judgment in favor of sellers on buyers' claims of fraudulent inducement and fraudulent misrepresentation based on sellers' alleged failure to disclose

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structural defects affecting multiple units and the potential for future litigation and assessments when selling condominium unit. Buyers presented no evidence that sellers' statements in their disclosures were false when made or that sellers actively concealed any material information from buyers. There was no genuine issue of material fact that buyers did not justifiably rely on any alleged misrepresentations, nondisclosure or concealment by sellers because the information buyers claimed sellers failed to disclose was equally available to buyers in condominium association meeting minutes buyers had agreed to review.

107980 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROBERT BANKS

Affirmed and remanded.

Anita Laster Mays, J., and Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Sentence contrary to law; R.C. 2929.11, 2929.12, 2929.14(C)(4), and 2953.08(G).

The trial court did not err in sentencing the appellant to a term of imprisonment instead of probation. The appellant's sentence is not contrary to law because it did not fall outside of the statutory range and the trial court considered the purposes and principles of felony sentencing set forth R.C. 2929.11 and 2929.12. The trial court also strictly complied with R.C. 2929.14(C)(4) when sentencing the appellant to consecutive sentences. The consecutive sentences are clearly and convincingly supported by the record as required by R.C. 2953.08(G). Through a nunc pro tunc entry, the trial court needs to correct the journal entry to reflect the correct sentence.

108036 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.C., ET AL.

Affirmed.

Mary J. Boyle, P.J., Anita Laster Mays, J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Permanent custody; R.C. 2151.414(A); R.C. 2151.414(D); "12 of 22"; R.C. 2151.414(E); R.C. 2151.414(D)(1); best interest of the child; guardian ad litem's reporting requirements; Juvenile Court's Loc.R. 18; Sup.R. 48.

The juvenile court's decision awarding permanent custody to Cuyahoga County Division of Children and Family Services was affirmed. Although the trial court improperly found that the children had been in the agency's temporary custody for 12 or more months of a consecutive 22-month period, it also made several findings under R.C. 2151.414(E) in support of the finding that the children

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could not be placed with mother within a reasonable time or should not be placed with mother. The agency also presented clear and convincing evidence that it was in the children's best interest to be placed in its permanent custody. Despite having nearly 16 months to do so, mother did not substantially comply with the requirements of her case plan. Finally, although the GAL's report contained some erroneous or stale information, the GAL properly supplemented her report orally with new information at the permanent custody hearing.

108091 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TAI RON R. CROCKETT

Affirmed.

Sean C. Gallagher, P.J., Patricia Ann Blackmon, J., and Frank D. Celebrezze, Jr., J., concur.

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

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.

108139 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.W.

Affirmed.

Patricia Ann Blackmon, J., Mary Eileen Kilbane, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Legal custody; preponderance of the evidence; best interest; R.C. 2151.414(D); abuse of discretion.*

Juvenile court's decision that award of legal custody of minor child to the father is in the child's best interest was supported by a preponderance of the evidence and was not an abuse of discretion.

108228 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
R.J.L. v K.R.

Affirmed; remanded for correction.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: *Domestic violence; civil protection order; R.C. 3113.31; manifest weight; competent, credible evidence;*

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continuance; duration; abuse of discretion.

The record contained sufficient competent, credible evidence to support the trial court's issuance of the domestic-violence civil protection order and its determination that the discipline imposed by a father upon his daughter was excessive physical discipline and constituted domestic violence as defined in R.C. 3113.31. The trial court did not abuse its discretion in continuing the full hearing by 13 days or by issuing the protection order for a duration of one year.

108258 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v DAVEION PERRY

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, A.J., and Patricia Ann Blackmon, J., concur.

KEY WORDS: R.C. 2953.23(A); successive petition for postconviction relief.

Defendant could not rely on R.C. 2953.23(A) in filing a successive petition for postconviction relief because neither of the exceptions for the successive petition were applicable to the case and there was no other jurisdictional basis for the trial court to consider the merits of the defendant's claims.