

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 6, 2020

108411 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CUYAHOGA COUNTY v UNITED AUTOWORKERS REGION 2-B, LOCAL 70

Reversed and remanded.

Eileen T. Gallagher, A.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Collective bargaining agreement; arbitration award; public policy; de novo factual finding; waiver.*

The trial court's judgment vacating arbitration award reversed where trial court erroneously concluded that the arbitration award violated public policy.

108468 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v EDDIE BURNS

Affirmed.

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

KEY WORDS: *Motion to sever; joinder; Crim.R. 8; probable cause; motion to suppress; identification; bindover; R.C. 2152.10; R.C. 2152.12; subject-matter jurisdiction; complicity; cumulative error.*

The juvenile court did not err in denying appellant's motion to sever. Appellant's convictions are not void for lack of jurisdiction. The juvenile court did not err in denying defense counsel's motion to suppress. The state presented sufficient evidence of probable cause to believe that appellant committed the offenses charged in the complaint.

108523 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DENISE TUFTS CARTER, ADMINISTRATOR v OFFICER HYMES, ET AL.

Affirmed in part; reversed in part.

Michelle J. Sheehan, J., and Eileen A. Gallagher J., concur; Mary J. Boyle, P.J., concurs in part and dissents in part (with separate opinion attached).

KEY WORDS: *Summary judgment; police officer immunity; R.C. 2744.03(A)(6)(b); vehicle pursuit.*

A driver was killed when his vehicle collided in an intersection with a speeding vehicle running a red light. The administrator of his

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(Case 108523 continued)

estate filed an action against two police officers whose zone car was closely following the speeding vehicle to obtain its license plate information.

The trial court properly denied summary judgment predicated on immunity regarding the officer who operated the zone car because there was a jury question as to whether the driver's failure to activate the emergency lights and siren was reckless. However, the trial court improperly denied summary judgment regarding the passenger officer, whose responsibility was to operate the zone car's computer data unit and to communicate with dispatch, because his conduct as a passenger of the zone car did not rise to the level of reckless conduct.

108648 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LESLIE EVANS

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, A.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Joinder; sever; prejudice; simple; direct; other acts; abuse of discretion; sufficient; manifest weight; aggravated robbery; firearm specification; robbery; theft; felonious assault; carrying a concealed weapon; tampering with evidence; weapon; disability; allied offense; import; victim; animus; consecutive; sentence; vacate; remand.*

The trial court did not err in denying defendant's motion to sever. Defendant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not abuse its discretion by admitting other acts evidence. The trial court erred in failing to merge certain allied offenses of similar import. The sentences imposed on these offenses are vacated.

108698 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BARBARA MADDY EXECUTOR FOR THE ESTATE v
HONEYWELL INTERNATIONAL, INC., ET AL.

109066 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BARBARA MADDY v HONEYWELL INTERNATIONAL, INC., ET AL.

Reversed and remanded.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; asbestos-related injury claims; causation; substantial factor; R.C. 2307.96.*

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(Case 109066 continued)

Trial court erred in entering summary judgment in favor of defendant manufacturer on plaintiff's asbestos-related injury claims. Genuine issues of material fact existed as to whether decedent was exposed to asbestos from defendant's brake products and, if so, whether that exposure was a substantial factor in causing decedent's mesothelioma and death.

108814 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANIEL DEUBLE

Reversed and remanded.

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

KEY WORDS: *Motion to suppress; probable cause; handcuffs; search of cell phone.*

The trial court improperly denied defendant's motion to suppress where investigating officers searched the defendant's cell phone after they, in effect, arrested him.

108818 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
RONALD TORRANCE, ET AL. v DAVOR ROM, ET AL.

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, A.J., Patricia Ann Blackmon, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Motion; dismiss; pleading; standing; contract; breach; representation; property; fraud; damages; fiduciary; deceptive; trade practices; civil conspiracy.*

The trial court did not err by dismissing plaintiff's claims for breach of contract and breach of fiduciary duty, because plaintiff did not have standing to pursue these claims against the defendants. Plaintiff was not an intended beneficiary of the agreements. However, construing the material allegations in the complaint in favor of plaintiff as true, the trial court erred in dismissing plaintiff's claims for violation of the Ohio Deceptive Trade Practices Act ("ODTPA") and civil conspiracy.

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108841 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DERRICK DEMETRIUS HUDSON

109011 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DERRICK HUDSON

Affirmed.

Michelle J. Sheehan, J., Eileen T. Gallagher, A.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Consecutive sentences.*

A review of the transcript of the sentencing hearing shows the trial court engaged in the requisite consecutive-sentence analysis and the record contains evidence to support the findings made by the trial court. The trial court also incorporated its findings in the sentencing entries. Appellant's consecutive sentence is not contrary to law.

108846 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LINDSEY WILLIAMS-DIGGINS v
PERMANENT GENERAL ASSURANCE CORPORATION OF OHIO

Affirmed.

Kathleen Ann Keough, J., and Patricia Ann Blackmon, J., concur; Eileen T. Gallagher, A.J., concurs with separate concurring opinion.

KEY WORDS: *Civ.R. 12(B)(6); actual cash value; fair market value; replace; vehicle; total loss.*

Trial court properly dismissed appellant's breach of contract claim under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted where appellant's automobile insurance policy limited appellee insurer's liability for a total loss to the lesser of the actual cash value of the automobile at the time of the loss or the replacement of the vehicle, defined actual cash value as the fair market value of the vehicle at the time of the loss, the insurer paid appellant the fair market value for his totaled vehicle, and appellant did not replace his vehicle. The insurance policy did not require that the insurer pay appellant sales tax and fees associated with replacing his vehicle where it paid him the fair market value of his totaled vehicle, and appellant did not replace his vehicle.

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108860 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE H.P.P., JR.

108861 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: H.P.P., JR.

Affirmed.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Testimony by Skype; right to confrontation; justification of remote testimony; harmless error.*

The record shows the trial court took precautions to ensure that the remote testimony did not violate appellant's right to confrontation. Therefore, even if we were to find that the state did not sufficiently justify a witness testifying remotely, there is no reasonable possibility that the remote testimony contributed to appellant's conviction. The trial court's admission of the remote testimony was harmless beyond a reasonable doubt.

108882 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v LEONARD PALMER

Reversed and remanded.

Eileen T. Gallagher, A.J., Kathleen Ann Keough, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Jail; community control; jail-time credit; confinement; sentence; conviction; conceded error; calculation; arrest.*

Defendant is entitled to additional jail-time credit for the days he spent in county jail prior to his conviction and sentence.

108958 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ARNOLD BLACK v DET. RANDY HICKS, ET AL.

Affirmed.

Eileen T. Gallagher, A.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Subject matter jurisdiction; Court of Claims; 42 U.S.C. 1983; color of state law; joint and several liability; jury interrogatories; Monell claim; supervisory liability; chief of police; rebuttal evidence; admissions; jury instructions; sufficiency; manifest weight.*

(Case 108958 continued)

Jury verdict awarding compensatory and punitive damages affirmed as supported by the manifest weight of the evidence.

Codefendant was jointly and severally liable for total amount of compensatory damages because jury interrogatories did not apportion liability among the defendants.

City police department and police chief were vicariously liable for the misconduct of a police officer where evidence showed that the officer acted pursuant to a custom and practice of violence that was either ratified by, or encouraged by, the chief.

Court acted within its discretion in excluding evidence that the defendants failed to produce in response to discovery.

Court's charge instructing the jury that certain admissions were conclusively established was proper where the defendants failed to respond to plaintiff's requests for admissions during discovery and the admissions were automatically deemed admitted.

Trial court acted within its discretion in refusing to take judicial notice of an indictment filed against the plaintiff where the evidence would have been misleading and confusing to the jury.

108981	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v PEDRO DIAZ			

Affirmed.

Sean C. Gallagher, J., Eileen T. Gallagher, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Consecutive sentences; R.C. 2953.08; clear and convincing.

The defendant did not demonstrate that the consecutive-sentence findings were clearly and convincingly not supported by the record, and therefore, no error occurred.