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Court of Appeals, Eighth Appellate District

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June 4, 2020

108172 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRANCE KIMBROUGH

108173 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TERRANCE KIMBROUGH

Affirmed and remanded.

Anita Laster Mays, J.; Eileen T. Gallagher, A.J., concurs in judgment only; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: *R.C. 2152.10, juvenile delinquent discretionary transfer, R.C. 2152.12, probable cause and amenability determination, R.C. 2929.11, R.C. 2929.12, felony sentencing, disproportionate sentence, R.C. 2152.11-13, serious youthful offender.*

The record supports that probable cause and amenability was established and the requisite factors considered in ordering appellant's discretionary transfer to criminal court. Plain error analysis reveals that appellant's sentence is not disproportionate or contrary to law, and the state did not pursue a serious youthful offender designation. The sentence is within the statutory range.

108285 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JOSEPH ANDREWS

Affirmed.

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

KEY WORDS: *Untimely and successive petition for postconviction relief; sexually oriented offender.*

The trial court's judgment denying defendant's motion to vacate his 1996 convictions and to remove him from the state's sex offender registry was affirmed. Defendant was labeled a sexually oriented offender under Megan's Law and is required to register as a sex offender for ten years. Because defendant spent time in prison for other crimes, he has not yet registered for ten years.

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108501 PARMA MUNI. C CRIMINAL MUNI. & CITY
IN RE CONTEMPT OF MICHELA HUTH

Affirmed.

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

KEY WORDS: *Attorney; direct contempt; disruptive; due process; R.C. 2705.01; R.C. 2705.03; abuse of discretion.*

Trial court did not abuse its discretion in finding an attorney in direct contempt of court where, despite being informed of the court's pretrial procedure and warned regarding her disruptive behavior, she continued to disregard the court's procedure and to challenge the authority of the court. Appellant could be summarily punished pursuant R.C. 2705.01, and the trial court was not required to follow the procedure outlined in R.C. 2705.03.

108613 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
W. P. C. v S. R.

Affirmed.

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

KEY WORDS: *Civil stalking protection order; R.C. 2903.214; menacing by stalking; R.C. 2903.211; preponderance; competent, credible evidence; ex parte protection order; R.C. 2903.214(E)(2)(a); five years; issuance.*

Affirmed trial court's issuance of a civil stalking protection order pursuant to R.C. 2903.214 where competent, credible evidence was presented to support trial court's determination that respondent committed menacing by stalking against petitioner and each family member to be protected. The trial court complied with R.C. 2903.214(E)(2)(a) by issuing the protective order for a period of four years from the date of issuance.

108626 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v TYRONE LEEGRAND, II

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, P.J., Sean C. Gallagher, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Aggravated murder; murder; felonious assault; aggravated robbery; carrying a concealed weapon; tampering with*

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evidence; having weapons while under disability; sufficiency of the evidence; manifest weight of the evidence; confrontation clause; consecutive sentences; void sentence.

108681 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
ENDURING WELLNESS, LLC v MICHAEL F. ROIZEN, M.D., ET AL.

Affirmed.

Mary Eileen Kilbane, J., Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., concur.

KEY WORDS: *Civ.R. 12(B)(6); tortious interference with contract; fraud; deceptive trade practices; R.C. 4165.02; R.C. 4165.02(A)(7); breach of contract; agency by estoppel; apparent authority.*

Trial court did not abuse its discretion in dismissing all five counts of plaintiff's complaint under Civ.R. 12(B)(6). The terms of the contract precluded recovery for the alleged breach of contract. Plaintiff's tortious interference claim could not be sustained absent a breach of contract. The fraud claim failed where plaintiff could not have justifiably relied on the alleged misrepresentations in light of the terms of the contract. Plaintiff failed to allege a violation of Ohio's Deceptive Trade Practices Act. Plaintiff failed to allege sufficient facts to sustain claims under an apparent authority theory.

108745 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v NICHOLAS SMERGLIA

Affirmed.

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

KEY WORDS: *R.C. 2929.21, R.C. 2929.22, R.C. 2929.24, misdemeanor sentencing, third-degree misdemeanor, R.C. 2945.71(B)(1), speedy trial.*

The trial court properly denied appellant's motion to dismiss for a speedy trial violation where a substantial portion of the statutory period was tolled pursuant to the statute. The trial court's sentence complied with R.C. 2929.21 and 2929.22 and was within the statutory limits.

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108791 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SELL JEFFERSON

Affirmed.

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

KEY WORDS: *Void sentence; res judicata; vexatious litigator.*

A trial court does not err by denying a motion to vacate a void sentence where appellant concedes that the sentencing order was valid and advances no claim that sentence was not statutorily authorized or that the trial court was without authority to impose it. A claim that a sentence is void fails where it merely seeks to relitigate previously decided issues. Moreover, where a party continues to engage in such frivolous conduct and to assert such claims, that party may be declared a vexatious litigator.

108830 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v INDIA CRENSHAW

Affirmed in part, reversed in part, and remanded.

Mary Eileen Kilbane, J., Patricia Ann Blackmon, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Domestic violence; enhancing offense; child abuse; serious physical harm; 2919.22(A)-(B)(1); ineffective assistance of counsel; witness competence; endangering children.*

Defendant appealed from her convictions for a second-degree felony endangering children charge, a third-degree felony endangering children charge, and a first-degree misdemeanor domestic violence charge. The domestic violence charge included a “furthermore clause” that alleged the defendant had previously pled guilty to an aggravated assault charge. The purpose of the furthermore clause was to elevate the domestic violence charge from a first-degree misdemeanor to a fourth-degree felony if the clause is proven.

The defendant struck her nine-year-old child and pushed her into a wall in an attempt to discipline her. At trial, the court did not conduct a full competency hearing for the child witness; we found that plain error did not occur though the court should have conducted the hearing.

We found that the domestic violence charge was not against the weight of the evidence because the disciplinary methods were not proper or reasonable parental discipline. However, we found that the state had not proven the “furthermore clause.” The state was required to prove that the defendant had committed the aggravated assault against a family member; they did not provide any evidence

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of the relationship between the victim and the defendant.

We found that the state did not present sufficient evidence that the victim had suffered serious physical harm, and per our precedent, overturned these convictions.

Finally, we did not find ineffective assistance of counsel.

108857	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID BARNES, JR.			

108858	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID BARNES, JR.			

109321	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v DAVID BARNES			

Affirmed.

Kathleen Ann Keough, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Confrontation Clause; hearsay; Evid.R. 804(B)(6); recorded jailhouse phone conversations; body camera footage, authentication; Evid.R. 901.

Trial court did not abuse its discretion in admitting recorded jailhouse phone conversations between defendant and the victim, as well as body camera footage of police officer's interactions with the victim, even though the victim did not testify at trial, where the jailhouse phone conversations showed the defendant engaged in wrongdoing with the purpose of keeping the victim from appearing at trial. The evidence did not violate the Confrontation Clause because the defendant's wrongdoing forfeited his constitutional right of confrontation, and under Evid.R. 804(B)(6), the out-of-court statements in the phone calls and on the body camera footage were not hearsay. The jailhouse phone calls were properly authenticated and thus admissible.

108865	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v CORDERO HARDY			

Affirmed.

Anita Laster Mays, P.J., and Eileen A. Gallagher, J., concur; Larry A. Jones, Sr., J., concurs in judgment only.

KEY WORDS: Plea agreements, breach.

The state did not breach its plea agreement with the appellant

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where it agreed to not take a position on sentencing, when it spoke on behalf of the victim at the sentencing hearing.

108898 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v BENJAMIN W. JOHNSON

Affirmed.

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

KEY WORDS: Sexual predator, clear and convincing evidence, manifest weight of the evidence.

The trial court did not err in classifying the appellant a sexual predator, because the trial court considered the necessary factors, and found clear and convincing evidence that its classification was not against the manifest weight of the evidence.

108916 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTOINE E. BLACKSHEAR, SR.

Affirmed.

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

KEY WORDS: Batson challenge; peremptory challenge; jury selection; voir dire; race-neutral reason; racial bias; clearly erroneous; sufficiency of the evidence; R.C. 2911.02(A)(2); intent to commit a theft offense; attempt to inflict physical harm; manifest weight of the evidence; inconsistent trial testimony.

Where the record supports the trial court's finding that the state provided a legitimate, race-neutral explanation to peremptorily excuse a potential African-American juror, we cannot find the trial court's denial of the defendant-appellant's Batson challenge was clearly erroneous. When viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of robbery proven beyond a reasonable doubt, thus defendant-appellant's sufficiency of the evidence challenge must be overruled. Upon reviewing the record, we cannot conclude that the jury clearly lost its way and created a manifest miscarriage of justice when it found defendant-appellant guilty of robbery under R.C. 2911.01(A)(2), and therefore, his manifest weight of the evidence argument is overruled.

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108946 CLEVELAND MUNI. G CIVIL MUNI. & CITY
JEFF DI FIORE v SHERITA Q. BOOKER, ET AL.

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *R.C. Chapter 1923, forcible entry and detainer, R.C. 5321.02, landlord retaliation, R.C. 5321.03, rent default defense, R.C. 5321.04, landlord obligations, R.C. 5321.07, rent deposits, App.R. 9, transcripts.*

The trial court's grant of restitution of the premises in a forcible entry and detainer action was not in error where tenant was in default of the rental obligation. An appellate court accepts the trial court's findings of fact as true and limits review to conclusions of law where an appellant fails to file a transcript or alternative record under App.R. 9.

109219 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE C.W.

Affirmed.

Patricia Ann Blackmon, J., Mary J. Boyle, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Termination of parental rights; continuance; abuse of discretion; R.C. 2151.414.*

The trial court did not abuse its discretion in denying continuance of permanent custody trial where appellant failed to appear, failed to appear on the previously scheduled trial date, did not communicate with her counsel or guardian ad litem, and the child had been in agency custody for 22 months.