

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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May 14, 2020

108018 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ANTHONY E. SOWELL

Affirmed.

Eileen T. Gallagher, A.J., Patricia Ann Blackmon, J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Trial court; grounds for relief; mitigation; defense counsel; death penalty; postconviction relief; direct appeal; res judicata; factors; substance abuse, depression; operative fact; investigate; ineffective assistance; discovery; funds; expert; constitution; abuse of discretion; preparation; evidentiary hearing.*

The trial court did not err in denying petitioner's request for funds to obtain an expert and additional discovery. Petitioner failed to show ineffective assistance of counsel during the mitigation phase of trial. While additional expert testimony might have established alternative or additional mitigating theories, there was not prejudice. Defendant's petition for postconviction relief failed to set forth sufficient operative facts to establish substantive grounds for relief.

108431 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JEREMY CRAWFORD

Affirmed.

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

KEY WORDS: *Involuntary manslaughter; having weapons while under disability; proximate result; alternate means; acquire, have, carry, use; sufficiency of the evidence; R.C. 2953.08(G)(2).*

Having a weapon while under disability may be the proximate result of death for purposes of involuntary manslaughter. Sufficient evidence was presented that appellant's having a weapon while under disability was the proximate cause of the victim's death where appellant instigated an argument, brandished a gun, and fired multiple shots. The trial court was within its discretion to reconsider appellant's sentence prior to journalizing the sentence, and the sentence was not contrary to law.

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108474 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v APRIL SCARTON

Affirmed.

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

KEY WORDS: *Crim.R. 29; motion for acquittal; R.C. 2903.02(A); murder; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel; trial strategy; objections; inferior-degree offenses; failure to give requested jury instruction; accident; exclusion of evidence.*

Trial court did not err in denying defendant's motion for acquittal. Defendant's murder conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. Defendant was not denied ineffective assistance of counsel based on defense counsel's strategic decisions in eliciting hearsay testimony, failure to object to evidence constituting an admission by defendant and objection to the state's request for jury instructions on inferior-degree offenses. Trial court did not abuse its discretion in failing to give defendant's requested separate jury instruction on accident where trial court's general jury charge instructed the jury that an act is not done purposely if it is done accidentally. Trial court did not abuse its discretion in excluding additional evidence of a witness' drug use or victim's text messages with third parties.

108621 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KYLE JOHNSON

Affirmed.

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

KEY WORDS: *Murder; motion for mistrial; abuse of discretion; Crim.R. 16; discovery violation; willful; sanction; prejudice; lesser included; involuntary manslaughter; manifest weight of the evidence.*

The trial court did not abuse its discretion in denying Johnson's motion for a new trial where the record shows the prosecution's failure to provide a copy of a disc containing video from one of the camera angles was not willful, the court provided the defense additional time to review the newly discovered video, the court excluded the video containing the raw footage that the defense had not previously received, and the defense always had in its possession the portions of the video surrounding the time of the homicide. The trial court properly denied Johnson's request to instruct the jury on the lesser included offense of involuntary manslaughter where there was no evidence of a drug deal gone

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awry, that a drug transaction had occurred, or that a drug transaction was the proximate cause of victim's death, and the evidence presented at trial did not reasonably support an acquittal on the murder charge. Johnson's convictions are supported by the manifest weight of the evidence.

108627 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE A.Z.

Affirmed in part; reversed in part.

Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur; Frank D. Celebrezze, Jr., J., concurs in judgment only.

KEY WORDS: R.C. 3109.04, shared parenting modification, child support.

The trial court's judgment is supported by competent, credible evidence. The denial of appellant's motion to modify child support is reversed and remanded for a hearing. The remainder of the judgment is affirmed.

108705 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMAL CAMMACK

Affirmed.

Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur; Larry A. Jones, Sr., J., dissents with separate opinion.

KEY WORDS: R.C. 2941.25, allied offenses, R.C. 2923.42, criminal gang activity, R.C. 2925.03, drug trafficking offenses, R.C. 2923.24, possession of criminal tools, R.C. 2923.23, having a weapon while under disability, R.C. 2929.14, consecutive sentences, R.C. 2929.12, sentence mitigation factors.

Appellant's guilty plea and conviction for engaging in criminal gang activity did not merge with appellant's pleas and convictions for drug trafficking, possession of criminal tools, and having a weapon while under disability. The criminal gang activity indictment covered a range of criminal gang activities over almost a two-year period. The drug-related charges arose from a sting operation that began late in the second year of the gang unit investigations based on information that appellant, reportedly a high-ranking gang member, was selling drugs. Appellant admittedly engaged in drug sales as a means of personal income. The drug transactions were committed separately and resulted in separate identifiable harm. Absent demonstrating a reasonable probability that the convictions were for allied offenses of similar import committed with the same

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conduct and without a separate animus, appellant cannot show plain error in this case.

The record supports the trial court's lawful imposition of consecutive sentences including the trial court's due consideration of mitigating factors.

108741 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEONTE L. AYERS

Affirmed.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Aggravated robbery; R.C. 2911.01(A)(1); sufficiency of the evidence; manifest weight of the evidence; motion to suppress; standing; inconsistent verdict; juror misconduct; plain error.

Defendant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence where there was testimony, surveillance footage, and physical evidence supporting the conviction. Not guilty verdicts on separate counts of the indictment do not constitute an inconsistent verdict warranting reversal. There was no plain error where the court did not conduct an inquiry of a juror regarding a juror question. The trial court properly denied defendant's motion to suppress where he lacked standing to contest the seizure of the automobile.

108819 CLEVELAND MUNI. G CIVIL MUNI. & CITY
TYESHA SPY, ET AL. v ARBOR PARK PHASE ONE ASSOCIATES, ET AL.

Reversed and remanded.

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

KEY WORDS: Landlord-tenant; unlawful eviction; Civ.R. 36; service; summary judgment; Civ.R. 56; pro se litigants; admissions of fact.

108932 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE G.A., ET AL.

Affirmed.

Mary J. Boyle, P.J., Frank D. Celebrezze, Jr., J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: *Permanent custody; R.C. 2151.414; best interest.*

The trial court did not err when it granted the agency's motion for permanent custody. The child had been in the temporary custody of the agency for nearly four years. The agency had been granted emergency temporary custody of the children after mother was accused of abusing one of the children. Mother was convicted of child endangering and domestic violence and spent two years in prison. Despite having almost a full two years to work on her case plan after she got out of prison, mother did not substantially complete all of the requirements under her case plan. Mother had stopped going to family counseling so she could not demonstrate that she could handle the child's behavioral and mental health issues. She also did not have housing or verifiable income at the time of the hearing. Moreover, R.C. 2151.414(D)(2) applied, and thus, the trial court was obligated to find that it was in the child's best interest to be placed in the agency's permanent custody and also grant the agency's motion.

109002 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE H.A.

Affirmed.

Frank D. Celebrezze, Jr., J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Permanent custody; best interest; manifest weight; legal custody; R.C. 2151.414.*

The trial court did not abuse its discretion in granting permanent custody of the minor child to plaintiff-appellee. The trial court's judgment that permanent custody is in the child's best interest is supported by clear and convincing evidence in the record.

109034 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE I.L.

Reversed and remanded.

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

KEY WORDS: *Legal custody; magistrate's decision; finding of fact; general objections; Juv.R. 40(D)(3)(b)(ii); abuse of discretion.*

Trial court properly considered father's objections to the magistrate's decision because the objections were specific objections as required by Juv.R. 40(D)(3)(b)(ii); the trial court abused its discretion in awarding custody of the minor child to father, instead of mother as recommended by the magistrate, where

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the trial court adopted the magistrate's findings of fact verbatim, and the only reasonable conclusion from those findings of fact was that the child should be returned to mother's legal custody with protective supervision by the Cuyahoga County Division of Children and Family Services.

109127 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JAMES JOHNSON

Vacated and remanded.

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

KEY WORDS: R.C. 2907.02; rape; victim under ten years old; R.C. 2971.03; notice; Crim.R. 32(C).

Where defendant was convicted of rape under R.C. 2907.02(A)(1)(b) (victim under 13 years old), and trial court declined to impose a sentence of life without parole under R.C. 2907.02, R.C. 2971.03 governs the sentence. Here, there was no separate finding that Johnson compelled the victim to submit by force or threat of force, no finding that he has previously been convicted of rape under R.C. 2907.02 or a substantially similar offense, and no finding that Johnson caused serious physical harm to the victim, as is relevant under R.C. 2971.03(B)(1)(c), so defendant could not be sentenced to 25 years to life pursuant to R.C. 2971.03(B)(1)(c), and instead was to be sentenced to 15 years to life. The judge signed the relevant rulings, and the clerk entered them on the journal, thereby complying with Crim.R. 32(C).