

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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November 12, 2020

108435 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SIERRA DAY

Affirmed.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Aggravated murder of a child; felony murder; child endangering; permitting child abuse; felonious assault; tampering with evidence; manifest weight of the evidence; sufficiency of the evidence; other acts evidence; Evid.R. 404(B); R.C. 2945.59; jury instructions; lesser included offense instruction; hearsay; Evid.R. 807; mistrial; joinder of trials; relevance; abuse of discretion; ineffective assistance of counsel.*

The trial court properly admitted evidence of prior bad acts under Evid.R. 404(B) and hearsay evidence under Evid.R. 807. Appellant was not denied her constitutional rights to a fair trial or the effective assistance of counsel. Appellant's convictions for aggravated murder, murder, felonious assault, endangering children, permitting child abuse, and tampering with evidence were supported by sufficient evidence and are not against the manifest weight of the evidence.

108463 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEONTE LEWIS

Affirmed in part, reversed in part, and remanded.

Eileen T. Gallagher, A.J., Frank D. Celebrezze, Jr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Sufficiency; aggravated murder of a child; felonious assault; felony murder; child endangering; permitting child abuse; ineffective assistance of counsel; lesser-included offense instruction; "all or nothing" trial strategy; motion to sever trials.*

Defendant's aggravated murder, felonious assault, and one of his child endangering convictions was supported by sufficient evidence. Two child endangering convictions, which required proof that defendant committed affirmative acts of torture or abuse, were not supported by sufficient evidence.

Defense counsel was not ineffective for failing to object to "other acts" where it was clear the "other acts" evidence applied to a codefendant rather than the defendant. Defense counsel was not ineffective for failing to request a lesser-included offense instruction because counsel pursued a sound "all or nothing" strategy with hope of acquittal rather than requesting a conviction of a lesser-included offense.

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(Case 108463 continued)

Defendant was not prejudiced by court's denial of defendant's motion to sever his case from that of his codefendant where the evidence was separate and distinct and defendant failed to demonstrate any prejudice.

108752 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ANTHONY WALKER

108884 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ANTHONY WALKER

Affirmed.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Void sentence; voidable sentence; postconviction motion; personal jurisdiction; subject matter jurisdiction; direct appeal; res judicata; plea agreement; concurrent sentences; consecutive sentences; sentencing agreement.*

Trial court did not err in denying defendant's motion to set aside void sentence and enforce the terms of his plea agreement filed in two cases. Even if trial court had improperly omitted the word "indefinite" from defendant's sentence, the sentencing error would render defendant's sentence voidable, not void. Where trial court had subject matter over defendant's case and personal jurisdiction over defendant, alleged error in defendant's sentence could only be challenged by objecting at sentencing or on direct appeal, not through a postconviction motion. Because defendant could have, but did not, raise any issue regarding his sentence in a direct appeal, res judicata barred his claims.

The record did not support defendant's contention that the imposition of concurrent sentences in two cases was a condition of a plea agreement in one of the cases. Rather, the record showed that the imposition of consecutive sentences was a term of a subsequent sentencing agreement between defendant and the state in which defendant waived his right to appeal the sentences imposed pursuant to the sentencing agreement. Defendant did not dispute the existence of the sentencing agreement, the terms of the sentencing agreement or that he knowingly, intelligently and voluntarily entered into the sentencing agreement.

109041 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES JOHNSON

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; suggestive photo array; gruesome photographs; costs of prosecution.*

It is the province of the jury to accept or reject any part of a witness' testimony. Conviction is not against the manifest weight of the evidence where a witness identifies the perpetrator of a crime depicted in surveillance video on the night of a crime and confirms in court that the defendant is that person, but fails to conclusively identify the defendant in a photo array presented the day after the crime. Evidence that is unrelated to guilt, regardless of whether the jury found it believable does not constitute evidence weighing heavily against conviction and does not cause a conviction to be against the manifest weight of the evidence. Moreover, a conviction is not against the manifest weight of the evidence merely because the state did not present conclusive physical evidence of guilt.

A trial court does not err by denying a motion to suppress a photo array where a defendant fails to establish that the photo array was unnecessarily suggestive. A photo array is not unnecessarily suggestive if the other people shown along with the defendant look relatively similar in age, features, skin tone, facial hair, dress and photo background.

A defendant does not establish plain error in the admission of photographic evidence pursuant to Evid.R. 403 where he fails to identify any specific photograph as violative of the rule or articulate a basis by which to draw such a conclusion.

A defendant fails to establish that the trial court abused its discretion in denying his motion to waive the imposition of the cost of prosecution where the argument, asserted for the first time on appeal consists of mere speculation that is not supported by the record.

109079 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v M.T.

Reversed and remanded.

Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur; Kathleen Ann Keough, P.J., concurs in judgment only in part and dissents in part with separate opinion.

KEY WORDS: *R.C. 2953.52; official records; abuse of discretion.*

Where an applicant is eligible for sealing under R.C. 2953.52, and the applicant demonstrates a legitimate interest in having the records sealed, a trial court abuses its discretion denying the application solely because the state could potentially re prosecute the case.

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109092 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RODNEY HOLLIS

Affirmed and remanded.

Frank D. Celebrezze, Jr., J., Eileen T. Gallagher, A.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Sentence; R.C. 2953.08; contrary to law; consecutive sentences; R.C. 2929.14; R.C. 2929.11; R.C. 2929.12; Reagan Tokes Act; constitutionality; indefinite sentence; R.C. 2929.144; plain error; due process; separation of powers; right to a jury trial.*

The trial court did not err in imposing consecutive sentences and appellant's sentence is not contrary to law. The trial court made the requisite findings under R.C. 2929.14(C)(4) and incorporated its findings into the sentencing journal entry. The trial court's consecutive-sentence findings are clearly and convincingly supported by the record. Appellant forfeited his constitutional challenge to the Reagan Tokes Act by failing to challenge the constitutionality of the Reagan Tokes Act in the trial court and failing to object to the trial court's imposition of an indefinite prison sentence.

109110 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MICHAEL THOMPSON

Affirmed.

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

KEY WORDS: *Other acts evidence; Evid.R. 404(B); abuse of discretion; R.C. 2945.59; Crim.R. 29; sufficiency of the evidence; purposely; kidnapping; murder; aggravated murder; manifest weight of the evidence.*

The trial court erred by admitting other acts evidence; however, the error was harmless because the evidence was not ultimately considered by the court in rendering its decision. Appellant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence.

109125 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
KAREN MILLER v DAVID MILLER

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, P.J., Anita Laster Mays, J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Contempt; attorney fees; R.C. 3105.18(G); plain error; Civ.R. 53.*

The trial court did not err by imposing a purge condition representing 10 percent of the spousal support arrearages and imposing an additional monthly obligation toward the arrearage, but erred in awarding attorney fees solely based on fee bills unaccompanied by any evidence demonstrating the reasonableness of the fees or their relation to the contempt proceedings under R.C. 3105.18(G).

109165	CLEVELAND MUNI. CITY OF CLEVELAND v SHANE BURKHART	C	CRIMINAL MUNI. & CITY
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Affirmed.

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

KEY WORDS: *Violation of protection order; R.C. 2919.27; weight of the evidence; sufficiency of the evidence.*

The finding of guilty for violation of a protective order was not against the weight of the evidence or based on insufficient evidence.

109173	COMMON PLEAS COURT STATE OF OHIO v DELSHAWN PHILPOTT	A	CRIMINAL C.P.
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109174	COMMON PLEAS COURT STATE OF OHIO v DELSHAWN PHILPOTT	A	CRIMINAL C.P.
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109175	COMMON PLEAS COURT STATE OF OHIO v DELSHAWN PHILPOTT	A	CRIMINAL C.P.
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Affirmed and remanded.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Change of counsel; self-representation; sufficiency of evidence; manifest weight of the evidence; resentencing; allied offenses; misdemeanor.*

Trial court properly denied defendant’s requests for change of counsel where the majority of defendant’s requests were so vague and nonspecific as to not trigger the trial court’s duty to inquire about the request, and where the requests were specific, the trial court conducted an adequate investigation and evaluation; the trial court properly denied defendant’s requests to represent himself because they were made solely to delay the proceedings;

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(Case 109175 continued)

defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence; case remanded for resentencing as allied offenses on certain drug trafficking and drug possession counts; remanded for resentencing on misdemeanor count of endangering children where the trial court sentenced the defendant to six months, instead of 180 days, as required by statute.

109183 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v JOHN THOMAS

Reversed and remanded.

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

KEY WORDS: R.C. 2950.09; House Bill 180 hearing; Megan's Law; sexual predator; child-victim predator.

The state of Ohio appeals the trial court's decision finding the appellee to not be a "child-victim predator." The court was required by R.C. 2950.09 to determine whether the appellee was a sexual predator. Accordingly, we reversed and remanded so that the trial court could make the proper finding.

109297 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CLEVELAND METROPARKS v RAPHAEL Y. CAUTHEN

Affirmed.

Michelle J. Sheehan, J., Eileen T. Gallagher, A.J., and Frank D. Celebrezze, Jr., J., concur.

KEY WORDS: Obstructing official business; sufficiency and manifest weight of the evidence.

Defendant's conviction of obstructing official business is affirmed because evidence shows his conduct was more than a mere refusal to cooperate with the police officers. His locking his vehicle's doors and holding the keys out of the reach of the officers, who needed access to his vehicle to remove prohibited alcohol inside, constituted an affirmative act that hampered and impeded the officers' duties of enforcing the Cleveland Metroparks ordinances.

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109322 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRIAN STONE

Affirmed.

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

KEY WORDS: *Reagan Tokes Act; forfeit; constitutionality of statute.*

The appellant failed to raise the constitutionality of the Reagan Tokes Act in the trial court, and thus has forfeited the issue on appeal.

109626 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE J.L.

Dismissed.

Eileen A. Gallagher, J., Eileen T. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Anders brief; motion to withdraw as counsel; meritorious grounds for appeal; wholly frivolous; motion for permanent custody; R.C. 2151.414(B)(1); R.C. 2151.414(D)(1); R.C. 2151.414(E); best interest of child.*

Counsel's motion to withdraw granted and appeal dismissed. Upon independent review of the record, no arguably meritorious issues were found to exist. Juvenile court did not abuse its discretion or otherwise err in concluding that award of permanent custody was in the best interest of the child and awarding permanent custody to the agency.