

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 15, 2020

108558 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ANDRE JACKSON

Reversed and remanded.

Kathleen Ann Keough, J., Mary J. Boyle, P.J., and Raymond C. Headen, J., concur.

KEY WORDS: *Death penalty; postconviction relief; intellectual disability; Atkins hearing; Lott factors; rebuttable presumption; significant subaverage intellectual functioning; IQ; preponderance of the evidence; abuse of discretion; competent and credible evidence; Ford test; remand.*

The trial court set aside the death penalty sentence by finding the defendant intellectually disabled under the Lott factors. However, the court misapplied the correct legal standard and relied on erroneous findings of fact; thus, constituting an abuse of discretion. The trial court did not adhere to the Lott test when it failed to identify and address the rebuttable presumption. Further, the trial court's decision mistakenly characterized and relied on an achievement score as an IQ score in evaluating whether the defendant has significant subaverage intellectual functioning. The court's reliance on another expert's opinion was inconsistent with the court's own findings and conclusions that the defendant is intellectually disabled. The trial court arbitrarily rejected, without justification, two other experts and their opinions. Despite these errors, the trial court's decision is not completely unsupported by competent and credible evidence that would require reversal of the trial court's decision and reinstate the defendant's death sentence. The case is remanded to the trial court to apply the new Ford test to determine whether the defendant is intellectually disabled.

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: *Reconsideration; 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

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(Case 108830 continued)

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 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.

108894 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v KELEND JONES

Affirmed.

Patricia Ann Blackmon, P.J., Michelle J. Sheehan, J., and Raymond C. Headen, J., concur.

KEY WORDS: *Murder; attempted murder; sufficiency of the evidence; manifest weight of the evidence; principal offender; accomplice; complicity; aiding and abetting.*

Defendant's murder and attempted murder convictions are supported by sufficient evidence in the record and are not against the manifest weight of the evidence. Video surveillance footage and eyewitness testimony showed that defendant and another male fired shots into a large crowd, killing one person and injuring five other people. There is no difference between those convicted of complicity in a crime or as a principal offender.

109050 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BUCKEYE RELIEF LLC v STATE OF OHIO BOARD OF PHARMACY

109051 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
BUCKEYE RELIEF LLC v STATE OF OHIO BOARD OF PHARMACY

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Reversed and remanded.

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

KEY WORDS: *R.C. Chapter 119; administrative appeal; medical marijuana control program; R.C. Chapter 3796.*

The trial court abused its discretion in affirming the Ohio Board of Pharmacy's decision to award medical marijuana dispensary licenses to three other applicants in District Northeast 2, representing Cuyahoga County.

109081 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM J. GALLAGHER v EDWARD W. COCHRAN, ET AL.

Affirmed in part, reversed in part, and remanded.

Mary Eileen Kilbane, J., and Anita Laster Mays, P.J., concur; Frank D. Celebrezze, Jr., J., concurs in part and dissents in part with a separate opinion.

KEY WORDS: *Summary judgment; agency; apparent authority; successor in interest; statute of frauds; equity; fraudulent misrepresentation; unjust enrichment; civil conspiracy; deposition.*

Plaintiff-appellant loaned over \$400,000 dollars to the owner of Barker Products, which began suffering financial difficulties. The defendant-appellee approached the members of the company with a plan to purchase the company. The parties dispute whether the defendant promised the plaintiff employment and/or an equity share as part of the defendant's ownership in order to pay off the plaintiff's debt.

The defendant purchased the assets of the company and renamed it Cleveland Plating.

Plaintiff brought suit against the defendant alleging that the defendant had agreed to repay the loans through employment and/or the equity share. The defendant filed a motion for summary judgment as to all claims. The court granted the motion and dismissed all the claims.

We found that the motion was improperly granted as to two claims and that there were genuine issues of material fact as to whether the defendant, and an individual acting as his agent, had bound Cleveland Plating to pay off the plaintiff's loans.

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109124 PARMA MUNI. C CRIMINAL MUNI. & CITY
CITY OF PARMA v DOUGLAS JAKUPCA

Affirmed.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Guilty plea; misdemeanor; petty offense; Crim.R. 11(E); substantial compliance; effect of the plea; totality of the circumstances; prejudice; effective assistance of counsel; sentence.*

Trial court substantially complied with Crim.R. 11(E) in its advisements prior to accepting the defendant's guilty plea to a petty offense misdemeanor. The totality of the circumstance revealed that the defendant understood the effect of the guilty plea. Moreover, the defendant did not demonstrate how he was prejudiced by the trial court's advisements. Defendant was not deprived of effective assistance of counsel by his counsel's educated guess of the sentence that would be imposed. Prejudice was not found because trial court advised the defendant of the maximum penalty that could be imposed.

109343 LAKEWOOD MUNI. G CIVIL MUNI. & CITY
DMS CONSTRUCTION ENTERPRISES, LLC v DANIEL J. HOMICK, ET AL.

Dismissed.

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

KEY WORDS: *Final, appealable order; motion for protective order; R.C. 2505.02(B)(4); work product doctrine; consulting expert privilege; former Civ.R. 26(B)(3) and 26(B)(5); testifying expert; nontestifying, consulting expert; colorable claim; lack of meaningful or effective remedy by postjudgment appeal.*

Appeal dismissed for lack of a final, appealable order. Appellate courts must decide on a case-by-case basis whether a trial court ruling ordering the disclosure of information allegedly protected by the work product doctrine is appealable based on whether the appellant has shown that a postjudgment appeal would be truly meaningless or ineffective. Trial court order denying appellants' motion for protective order and allowing for deposition of appellants' expert over appellants' objections based on the work product doctrine and consulting expert privilege was not a final, appealable order under R.C. 2505.02(B)(4) where appellants did not show that they would not be afforded a meaningful or effective remedy in a postjudgment appeal.