

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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October 29, 2020

107683 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NIGEL J. BRUNSON

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Aggravated murder; aggravated robbery; kidnapping; aggravated burglary; felonious assault; having weapons while under disability; right to a public trial; partial closure; right to be present; right to confrontation; attorney-client privilege; opinion testimony; abuse of discretion; harmless error; hearsay; Evid.R. 801(D)(2)(e); joinder; severance; Crim.R. 8; Crim.R. 14; plain error; phone records; ineffective assistance of counsel; mitigation; right to remain silent; sentence; cumulative error.*

The removal of defendant's family member from the courtroom following disruptive behavior did not violate the defendant's right to a public trial. Defendant's absence from a conversation regarding the disturbance did not violate his right to be present at all stages of the proceedings. The trial court did not abuse its discretion in concluding that statements made by an alleged coconspirator and state's witness to his attorney were protected by attorney-client privilege and therefore not subject to cross-examination. Testimony as to defendant's identity as a suspect identified in surveillance footage was harmless error. The trial court did not abuse its discretion in admitting statements made in furtherance of conspiracy pursuant to Evid.R. 801(D)(2)(e) or cell phone records. The joinder of defendant's trial to that of his codefendants was not plain error. Defendant did not receive ineffective assistance of counsel. The court considered defendant's lack of remorse and did not use his silence against him during sentencing.

108322 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GEORGE R. TAYLOR

Affirmed.

Decision En Banc:

Eileen T. Gallagher, A.J., Sean C. Gallagher, Frank D. Celebrezze, Jr., Kathleen Ann Keough, Michelle J. Sheehan, and Mary Jane Boyle, JJ., concur.

Raymond C. Headen, J., concurs with separate opinion.

Anita Laster Mays, J., dissents with separate opinion, with Larry A. Jones, Sr., Eileen A. Gallagher, Mary Eileen Kilbane, and Patricia Ann Blackmon, JJ.

Decision of the Merit Panel:

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Patricia Ann Blackmon, J., Eileen T. Gallagher, A.J., concurs with separate opinion, and Anita Laster Mays, J., dissents with separate opinion.

KEY WORDS: *En Banc; Motion to suppress; registration sticker; dashboard; console; probable cause.*

The En Banc court determined that when police detect an odor of marijuana from a vehicle during a lawful traffic stop and find marijuana in the passenger compartment of the vehicle, they have probable cause to search behind a visibly displaced panel of the dashboard/center console. The original merit panel held that the trial court did not err in concluding that the traffic stop was supported by reasonable suspicion because the registration sticker was obstructed; where the officer smelled marijuana during the traffic stop; search of passenger compartment was proper; the trial court properly denied the motion to suppress marijuana; ammunition found in console; the trial court did not err in denying motion to suppress weapon (and related statements) found after officer took apart the dashboard during search.

108854 DOMESTIC RELATIONS F CIVIL C.P.-JUV, DOM, PROBATE
RYAN LICHTENSTEIN v MELISSA LICHTENSTEIN

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, P.J., Larry A. Jones, Sr., J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Divorce; Civ.R. 53; independent review; magistrate's decision; objections; child support; separate and marital property; R.C. 3105.171; temporary orders; Civ.R. 75(N); attorney fees.*

The trial court's judgment entry of divorce was affirmed in part, reversed in part, and remanded. The trial court failed to independently review the magistrate's decision on the issues of child support and attorney fees. Therefore, those matters were reversed and remanded for the trial court to independently review. The trial court's judgment was also reversed with respect to husband's unused sick and vacation time and the temporary orders. Regarding husband's unused sick and vacation time, the trial court applied the wrong standard. With respect to the temporary orders, the trial court improperly concluded that issues were moot. However, the trial court's judgment was affirmed regarding the marital residence, husband's retirement benefits, marital debt, husband's bank accounts, and a 529 college account.

108953 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GARY L. SANDERS

Affirmed.

Raymond C. Headen, J., Patricia Ann Blackmon, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Involuntary manslaughter; felonious assault; having weapons while under disability; Evid.R. 612; Evid.R. 803(5); present recollection refreshed; abuse of discretion; reliability; Crim.R. 16; discovery violation; Fifth Amendment; privilege against self-incrimination; standing; Evid.R. 801; sufficiency of the evidence; manifest weight of the evidence.*

The trial court did not abuse its discretion in allowing the testimony of a witness following the state's refreshing of her recollection pursuant to Evid.R. 612. The trial court did not abuse its discretion in allowing a witness to testify despite a late disclosure of the witness by the state. The appellant lacks standing to challenge the trial court's decisions regarding a witness's Fifth Amendment privilege against self-incrimination, and the trial court did not abuse its discretion by allowing a witness's former testimony into evidence following a determination that the witness was unavailable. The appellant's convictions were not against the manifest weight of the evidence and were supported by sufficient evidence.

108957 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
M.M., ET AL. v M.F., ET AL.

Affirmed.

Raymond C. Headen, J., Mary J. Boyle, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Motion for summary judgment; de novo; negligent entrustment.*

The trial court properly granted summary judgment in favor of defendant where there were no genuine issues of fact as to any of the elements of plaintiffs' negligent entrustment claim. The trial court did not err in not explicitly addressing each of plaintiffs' additional theories of liability because they were either encompassed by the analysis of the negligent entrustment claim or not properly pled in the complaint.

109058 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v G.K.

Reversed and remanded.

Mary Eileen Kilbane, J.; Kathleen Ann Keough, P.J., concurs with separate concurring opinion; and Michelle J. Sheehan, J., dissents with separate dissenting opinion.

KEY WORDS: *R.C. 2953.31; R.C. 2953.32; R.C. 2953.52; R.C. 2953.61; expungement; record sealing; partial sealing; dismissed indictment; eligible offender; inherent authority.*

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(Case 109058 continued)

Defendant-appellant applied to have part of a partially dismissed indictment sealed. Defendant-appellant pled guilty to one charge in the indictment and all other charges against him were nolle. The trial court denied his application under R.C. 2953.61. Denial was reversed and the matter remanded for further consideration. Denial was reversed because R.C. 2953.61 did not preclude the application brought under R.C. 2953.52 where the defendant-appellant's conviction was not exempt from sealing under R.C. 2953.36. Alternatively, appellant's application is entitled to consideration pursuant to the inherent judicial authority set forth in *Pepper Pike v. Doe*, 66 Ohio St.2d 374, 376, 421 N.E.2d 1303 (1981). On remand, the trial court is to determine whether defendant-appellant's interests in sealing the dismissed charges outweigh the state's interests in maintaining the records. If so, the trial court shall issue an order sealing the dismissed charges pursuant to R.C. 2953.52.

109113 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CATHERINE TASSE, ET AL. v DANIEL F. MARSALEK, AS ADMINISTRATOR, ET AL.

Reversed and remanded.

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

KEY WORDS: *Political Subdivision Tort Liability Act; R.C. Chapter 2744; Civ.R. 12(B)(6); de novo; negligence; political subdivision immunity; employee immunity; R.C. Chapter 955.*

The trial court erred in denying defendants-appellants' Civ.R. 12(B)(6) motion to dismiss based on R.C. 2744.02 immunity. Plaintiffs-appellees did not establish that the city's immunity from their negligence claims was barred by one of the enumerated exceptions in R.C. 2744.02(B). Plaintiffs-appellees also did not establish that the employee's immunity from their negligence claims was barred by an exception in R.C. 2744.03(A)(6).

109134 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RASHDI RUFFIN

109135 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v RASHDI RUFFIN

Dismissed.

Anita Laster Mays, J., and Mary Eileen Kilbane, J., concur; Sean C. Gallagher, P.J., dissents with separate opinion.

KEY WORDS: *Anders brief.*

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(Case 109135 continued)

This court has examined and considered the arguments identified in counsel's Anders brief supporting the validity of the appellant's plea and sentence. We conclude that there are no arguable legal points on the merits of this matter. This appeal is wholly frivolous pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel's request to withdraw is granted.

109140 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CARMEN CRUZ v WESTERN/SCOTT FETZER COMPANY, ET AL.

Affirmed.

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

KEY WORDS: R.C. 2745.01; employer intentional tort liability; equipment safety guard; deliberate removal.

The trial court properly granted defendant employer's motion for summary judgment because there were no genuine issues of material fact as to whether the device in question was an equipment safety guard pursuant to R.C. 2745.01 or whether the employer engaged in a deliberate removal of the equipment safety guard.

109182 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DAZELLE NEWMAN

Affirmed.

Larry A. Jones, Sr., J., Frank D. Celebrezze, Jr., P.J., and Raymond C. Headen, J., concur.

KEY WORDS: Competency; right to waive counsel; self-representation.

The trial court (1) considered numerous requests by appellant to represent himself; (2) referred appellant to the trial court's psychiatric clinic; (3) advised appellant of the nature of the charges and the range of allowable punishment; and (4) inquired of appellant if his waiver was knowingly and voluntarily being made. The trial court did not err where the trial court allowed appellant to proceed pro se representing himself.

Although appellant attempted to sway the testimony of witnesses, the final truth of their testimonies supported the convictions; the in-court identifications were not discredited by witnesses' failure to 100% identify appellant prior to trial. Appellant's convictions were not against the manifest weight of the evidence.

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109192 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
AMY WITZIGREUTER v CENTRAL HOSPITAL SERVICES, INC., ET AL.

Affirmed.

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

KEY WORDS: *Motion for summary judgment; age discrimination; gender discrimination; reduction in force (“RIF”); McDonnell Douglas test; prima facie case; similarly situated; supervisor liability; postemployment commissions.*

The trial court did not err when it granted defendant-appellee employer and defendant-appellee supervisor’s motions for summary judgment where the plaintiff-appellant offered no evidence to prove the decision to terminate her was based on age or gender. No personal liability attached to employees who were not the decision maker with regard to the adverse employment action. Where plaintiff-appellant provided no evidence of discrimination on the part of her supervisor or fellow employees, the trial court correctly found the defendants-appellees were not subject to liability under R.C. 4112.02(J). Plaintiff-appellant did not contract for payment of postemployment commissions. Therefore, the trial court did not err when it granted summary judgment and found defendant-appellee employer was not required to pay postemployment commissions or commissions on contracts that were not finalized prior to plaintiff-appellant’s termination.

109428 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v B.J.

Reversed and remanded.

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

KEY WORDS: *Expungement; R.C. 2953.31(A)(1)(a); 2953.31(A)(1)(b); eligible offender; ambiguous; discretion.*

The trial court found that the Appellee was eligible for an expungement because it found that her six felony convictions merged into one felony conviction pursuant to R.C. 2953.31(A)(1)(b). However, the trial court found that the Appellee was eligible pursuant to subsection (a). We found that there is no merger language in subsection (a) and that the statutory language clearly did not mean for felony convictions to merge for the purpose of determining eligibility under subsection (a). Accordingly, we found that the Appellee was not an eligible offender and reversed the decision of the trial court.