

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 15, 2021

109184 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v BRANDON ADKINS

109185 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHARLES TROWBRIDGE

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Firearm specifications; sentencing; agreed sentence; agreed sentencing range; reviewable; mandatory sentencing provisions.*

Trial court erred in failing to impose mandatory consecutive sentences on firearm specifications attendant to appellees' felony convictions.

109238 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ALONZO THORPE, JR.

Affirmed.

Eileen T. Gallagher, J., and Mary J. Boyle, A.J., concur; Mary Eileen Kilbane, J., dissents with separate attached opinion.

KEY WORDS: *Reckless homicide; lesser-included-offense instruction; negligent homicide; murder; expert report; ballistics; match; consistent with; prosecutorial misconduct; Crim.R. 16(K); expert report; motion to suppress; Franks challenge; search-warrant affidavit; cumulative error.*

Trial court properly instructed the jury on lesser included offense of reckless homicide where evidence supported a finding that the defendant was not guilty of murder but was guilty of the lesser included offense of reckless homicide.

Trial court properly refused to instruct the jury on negligent homicide because negligent homicide was not a lesser included offense of either murder or reckless homicide.

Allowing the state's ballistics expert to describe a bullet and shell casing found at the crime scene as a "match" instead of describing it as "consistent with" a bullet and shell casing from a test-fired gun in the defendant's possession did not amount to plain error, where there was no legal authority to support the claimed error and the evidence of defendant's guilt was overwhelming.

Prosecutor did not engage in prosecutorial misconduct in opening

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statement. Although prosecutor's question that implied the defendant's guilt was inappropriate, it was an isolated comment and did not prejudice the outcome of the trial.

Although ballistics expert testified about guns not described in the expert report, the defense was not prejudiced because the expert's notes on the guns were produced in discovery and the defense previously cross-examined the expert in a prior proceeding.

Trial court properly overruled a motion to suppress based on a Franks challenge without a hearing where probable cause still would have been found even if the allegedly false statement were removed from the search warrant affidavit. There was no cumulative error.

109335	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JERRY SIMS, JR.			

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Aggravated murder; sufficiency of evidence; manifest weight; prosecutorial misconduct; ineffective assistance of counsel; other-weapons evidence.

Appellant's convictions of aggravated murder and related offenses are affirmed because the state presented sufficient evidence to support his guilt and his convictions were not against the manifest weight of the evidence. The prosecutorial allusion at the opening argument to another shooting linked to appellant by ballistic evidence did not prejudice appellant's substantial rights because the state presented overwhelming, well-corroborated testimonial evidence to prove appellant's guilt. Appellant's claim that his trial counsel provided ineffective assistance in failing to object to other-weapons evidence lacks merit because, even if assuming several witnesses' testimony constituted improper other-weapons evidence, appellant fails to demonstrate there is a reasonable probability that the result of the trial would have been different if counsel were to object to the evidence.

109408	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v MAURICE ELLIS			

Affirmed.

Michelle J. Sheehan, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Self-defense, R.C. 2901.05, jury instructions, verdict

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forms, ineffective assistance of counsel, manifest weight of the evidence. The order of the presentation of instructions was logical and proper where the trial court instructed the jury first on the underlying offenses, then on the law of self-defense. The trial court further provided proper verdict forms because there is no requirement that the verdict form contain a special finding as to self-defense. As there was no error in the jury instructions or the verdict forms, appellant did not suffer ineffective assistance of counsel where trial counsel did not object to either. Finally, the convictions in this case are not against the manifest weight of the evidence.

109493 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v CHAD B. RITCHIE

Affirmed.

Mary Eileen Kilbane, J., Frank D. Celebrezze, Jr., P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Crim.R. 32.1; motion to withdraw guilty plea; postsentence; Crim.R. 11; ineffective assistance of counsel; manifest injustice; evidentiary hearing; abuse of discretion.*

The trial court did not abuse its discretion in denying a postsentence motion to withdraw a guilty plea without holding an evidentiary hearing where the motion and supporting documents did not demonstrate a manifest injustice.

109497 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JUSTIN GOINS

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Second-degree burglary; third-degree burglary; "likely to be present."*

The state failed to present evidence to prove all the essential elements of a second-degree felony burglary offense as defined in R.C. 2911.12(A)(2), but the evidence presented supported a conviction of a lesser-included third-degree felony burglary offense as defined in R.C. 2911.12(A)(3). The matter is remanded with instructions for the trial court to modify the judgment of conviction for a third-degree felony burglary offense and to resentence appellant.

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109570 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAHMAL E. NICHOLSON

Affirmed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., Eileen T. Gallagher, J., concur.

KEY WORDS: *Motion to appoint new counsel; untimely, presumption of bad faith; Crim.R. 11(C); guilty plea; knowingly; intelligently; and voluntarily.*

Appellate courts review a trial court's decision whether to remove court-appointed counsel for an abuse of discretion. Although Nicholson suggests the trial court summarily denied his motion without consideration, the trial court noted that the motion was being made on the day of trial. There is a presumption of bad faith that must be overcome if the request for new counsel is made on the day of trial. The record reveals the trial court considered the request with the proper safeguard for Nicholson's constitutional rights. We find no abuse of discretion, because the request was not timely and not supported by good cause.

Due process requires that a defendant's plea be made knowingly, intelligently, and voluntarily; otherwise, the defendant's plea is invalid. The purpose of Crim.R. 11(C) is to provide the defendant with relevant information so that he can make a voluntary and intelligent decision whether to plead guilty. A trial court must strictly comply with the Crim.R. 11(C)(2)(c) requirements that relate to the waiver of constitutional rights. Our review indicates the trial court strictly complied with the requirements of Crim.R. 11(C). As such, we find that Nicholson's plea was made knowingly, intelligently, and voluntarily.

109614 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES TOMLINSON

Affirmed.

Larry A. Jones, Sr., P.J., Michelle J. Sheehan, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Crim.R. 8(A)/joinder; Crim.R. 14/relief from joinder; Evid.R. 803(2)/excited utterance/hearsay exception; admission of evidence; abuse of discretion; Crim.R. 16/discovery.*

The indicted offenses against appellant were of the same or similar character where appellant fired the same weapon at multiple victims - one victim being involved in two of the three shootings. Appellee presented simple and direct evidence of the multiple offenses and there was no evidence that the jury was confused. There was no prejudicial joinder against appellant, and there was no error where the trial court denied appellant's motion for relief from prejudicial joinder.

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Appellant was not denied his constitutional right to confront witnesses. Statements made by victims and witnesses given to the officer and recorded on the officer's body camera, and determined not to be testimonial, met the standard for an excited-utterance-hearsay exception. It was not an abuse of discretion where the trial court allowed the body-camera statements to be admitted as evidence.

Appellant's claim, that evidence turned over to appellant five days into trial prejudiced appellant, is without merit. The offenses, to which the evidence pertained, were dismissed. Thus, appellant cannot show that he was prejudiced where the evidence was allowed. At most, the admission of the evidence was harmless error.

109900	BEDFORD MUNI.	G	CIVIL MUNI. & CITY
JEFF MOORE v CHAGRIN VALLEY PAVING, ET AL.			

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Negligence; small claims; manifest weight; competent and credible evidence; comparative negligence; damages; abuse of discretion; App.R. 16.

The trial court's determination that plaintiff was comparatively at fault for damages to his vehicle while driving through a construction zone was supported by competent and credible evidence. The trial court's damages award was not an abuse of discretion.

109959	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v JEFFERY COVER			

Reversed and remanded.

Sean C. Gallagher, P.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Conceded error; void; voidable; R.C. 2929.13; R.C. 2921.331; mandatory sentence.

The parties agree that the trial court erred in designating sentences imposed under R.C. 2921.331(D) as mandatory sentences.

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110098 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MARQUWAN BLAKEY

Vacated and remanded.

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

KEY WORDS: *Conceded error; guilty plea; Crim.R. 11; strict compliance; constitutional rights; knowing, intelligent, and voluntary.*

Appellant's convictions are vacated because the trial court failed to strictly comply with the constitutional requirements of Crim.R. 11 by failing to inform the appellant of the constitutional rights he would be waiving by pleading guilty.

110122 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE S.A., JR.

Affirmed.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Permanent custody; termination of parental rights; remedy conditions; best interests; clear and convincing evidence.*

Clear and convincing evidence supports the trial court's decision granting permanent custody to CCDCFS. The evidence demonstrated that mother failed to substantially remedy the conditions that caused the child to be removed from mother's care; thus, the child could not be placed with mother within a reasonable time or should not be placed with her. Additionally, granting permanent custody and terminating the rights of mother was in the child's best interest because the child had been in the custody of his foster caregivers for over two years, the child's unique medical needs necessitated a legally secure placement, and mother's current substance abuse issues prevented her from providing the child the type of care he needs.