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Court of Appeals, Eighth Appellate District

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March 25, 2021

109404 EAST CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF EAST CLEVELAND v ANITA M. HARRIS

Affirmed.

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

KEY WORDS: *East Cleveland Codified Ordinances (“E.C.O.”) 333.01(a)(1)(A); driving under the influence of alcohol; E.C.O. 337.27(b)(1); driving without wearing a seatbelt; E.C.O. 331.08(a)(1); failing to drive in one lane; R.C. 2317.30; Evid.R. 603; oath administered to witnesses; Crim.R. 29(A); sufficiency of the evidence; ineffective assistance of counsel.*

The trial court did not commit plain error when it failed to administer the oath to the police officer before he testified at trial. The officer’s unsworn trial testimony was nearly identical to his sworn testimony at the suppression hearing that was immediately before the trial, and the record does not establish that the outcome of the trial would have been different if the trial court administered the oath at trial. The defendant failed to establish that her counsel’s failure to object to the officer’s unsworn testimony caused her prejudice, and she therefore is unable to establish a claim for ineffective assistance of counsel. Sufficient evidence supported the defendant’s DUI conviction.

109423 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONOVAN E. MILLER

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *R.C. 2953.08(G)(2); felony sentencing; purposes; clearly and convincingly; contrary to law; R.C. 2929.11; minimum sanction; R.C. 2929.12(C); mitigation; proportionality; R.C. 2929.14(B)(2)(e).*

Appellant’s sentence is supported by the record and not clearly and convincingly contrary to law. In addition, the trial court properly considered the factors of R.C. 2929.12(C)(1) and (2) and determined that they did not apply to appellant’s case. Appellant’s sentence was not imposed under R.C. 2929.14(B)(2)(b), and thus R.C. 2929.14(B)(2)(e) did not apply.

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109432 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DEYA JOYCE ANN JOHNSON v
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.

Affirmed in part; reversed in part; dismissed in part; remanded.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Denial of motion for summary judgment; Civ.R. 56(C); genuine issue of material fact; motorcycle accident; jurisdiction; R.C. 2744.02(C); political subdivision immunity; R.C. 2744.02; R.C. 2744.03(A)(6); exceptions to immunity; R.C. 2744.02(B)(1), (B)(2); R.C. 2744.03(A)(6)(b); negligent operation of bus; left turn; right of way; R.C. 4511.42(A); Cleveland Codified Ordinances 431.17; R.C. 4511.01(UU)(1); preferential status; proceeding in a lawful manner; forfeit right of way; wanton conduct; reckless conduct.*

Trial court properly denied rapid transit authority's motion for summary judgment based on political subdivision immunity under R.C. 2744.02(A), where plaintiff alleged that bus operator's negligence in turning left at intersection into path of motorcycle caused motorcycle operator's death. Genuine issues of material fact existed as to whether bus operator was negligent in operating the bus under exceptions to immunity in R.C. 2744.02(B)(1), (B)(2), including whether motorcycle with ostensible right of way lost its preferential status by proceeding in an unlawful manner through the intersection and whether bus operator otherwise failed to exercise ordinary care.

Trial court erred in denying bus operator's motion for summary judgment based on statutory immunity under R.C. 2744.03(A)(6). Based on the evidence presented, there was no genuine issue of material fact that bus operator did not act wantonly or recklessly in operating the bus to support exception to immunity under R.C. 2744.03(A)(6)(b).

Appellate court lacked jurisdiction to consider cross-appeal of trial court's denial of plaintiff's cross-motion for partial summary judgment on liability as to claims against rapid transit authority. R.C. 2744.02(C) grants appellate court jurisdiction only to consider trial court's decision on immunity, not other alleged errors concerning the denial of summary judgment on other grounds.

109476 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANAN SIMMONS, JR.

Reversed and remanded.

Michelle J. Sheehan, J., Sean C. Gallagher, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Reagan Tokes Law; right to appeal; constitutional*

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challenges; ripe for review; separation-of-powers doctrine; procedural due process. State has right to appeal sentence that did not impose indefinite sentence under Reagan Tokes Law. Reagan Tokes Law does not violate the separation-of-powers doctrine because the judicial branch imposes the indefinite sentence, and the executive branch does not have authority to increase the maximum sentence imposed; Reagan Tokes Law does not violate procedural due process because it provides for notice of a hearing at which an inmate is allowed an opportunity to be heard.

109535 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DEMITRUS SOLOMON

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Rape; R.C. 2907.02; sexual conduct; R.C. 2907.01; gross sexual imposition; R.C. 2907.05; sexual contact; erogenous zone; sufficiency; Crim.R. 29; manifest weight; motion for a mistrial; abuse of discretion; fair trial; emotional outburst; curative instruction; consecutive sentences; R.C. 2953.08; R.C. 2929.14; contrary to law; R.C. 2929.11; R.C. 2929.12.

Appellant's rape and gross sexual imposition convictions were supported by sufficient evidence and are not against the manifest weight of the evidence. The trial court did not abuse its discretion in denying defense counsel's motion for a mistrial following the emotional outburst of a state's witness. The trial court did not err in imposing consecutive sentences, and appellant's sentence is not contrary to law.

109568 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v JAMES LONG, JR.

Affirmed.

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

KEY WORDS: Traffic regulation; municipal law; municipality; sovereign citizen; sovereign nation; meritless; assignment of error; must state legal basis of appeal.

Defendant appealed trial court's judgment affirming magistrate's convictions for various municipal traffic violations. His assignment of error failed to state what legal error occurred and his brief does not detail any legal argument or basis for overturning his conviction. Appellant's various random arguments based on a "sovereign citizen" theory are without merit. Because these

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arguments are meritless and defendant does not detail any other legal basis to overturn the convictions, the judgment is affirmed.

109594 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
LITTLE AQUANAUTS, LLC v MAKOVICH & PUSTI ARCHITECTS, INC., ET AL.

Affirmed.

Frank D. Celebrezze, Jr., J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: R.C. 2711.01(A); motion to compel arbitration; terms and conditions of sale; arbitration provision; arbitrability; scope.

Appellee's claims do not fall within the scope of the arbitration clause. The arbitration provision in this matter is narrow in scope and covers solely disputes "arising under these Terms and Conditions of Sale." As appellee's claims can be asserted without any reference to the Terms and Conditions, the trial court did not err in denying appellants' motion to compel arbitration or, alternatively, motion to dismiss.

109629 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DANIEL BUREY

Affirmed.

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

KEY WORDS: Theft; telecommunications fraud; sufficiency; manifest weight; allied offenses.

Defendant's convictions for theft and telecommunications fraud were upheld because the state proved that the defendant used the victim's cell phone beyond the scope of authorization by downloading a gaming app and then made in-app purchases against the victim's debit card. The two offenses did not merge because the defendant's separate conduct of downloading the gaming app and then repeatedly making charges against victim's debit card were committed separately, with a separate animus, and caused separate identifiable harm.

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109676 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v AMEEN SARI

Affirmed.

Mary Eileen Kilbane, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Unlawful sexual conduct with a minor; importuning; possession of criminal tools; mistrial; undue influence; R.C. 2945.36; ineffective assistance of counsel; plain error.*

The trial court's decision to release a potential juror for cause, rather than declaring a mistrial, was not plain error. Appellant did not receive ineffective assistance of counsel where his attorney did not object or request a mistrial following a statement by a prospective juror relating her positive experience with the task force that arrested appellant.

109708 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
WILLIAM VACTOR, ADMINISTRATOR v FRANKLIN BOULEVARD NURSING HOME, INC., ET AL.

Reversed and remanded.

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

KEY WORDS: *Summary judgment; Civ.R. 56; de novo review; medical malpractice; proximate cause; expert testimony; jury issue.*

The trial court erred in determining that appellant had failed to provide sufficient evidence to demonstrate that the actions of the nursing home staff proximately caused the death of the decedent.

109730 SOUTH EUCLID MUNI. G CIVIL MUNI. & CITY
JILL KENT v LEO'S ENTERPRISE LLC, ET AL.

Affirmed.

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

KEY WORDS: *Breach of contract; Ohio Consumer Sales Practices Act; R.C. 1435.01 et seq.; Civ.R. 52; Civ.R. 53(D)(3)(ii); magistrate's decision; findings of fact; conclusions of law; substantially comply; manifest weight; oral contract; enforceable contract; meeting of the minds; definite and certain.*

Affirmed the trial court's judgment in favor of appellees on claims of breach of contract and violation of the Ohio Consumer Sales

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Practices Act. The magistrate's decision substantially complied with Civ.R. 53(D)(3)(a)(ii), and additional findings of fact and conclusions of law were not necessary because the trial court's decision, when considered with the rest of the record, formed an adequate basis for review. The trial court's judgment was not against the manifest weight of the evidence and the trial court did not commit error in its determinations. The additional tree work appellant requested was not included in the scope of the parties' oral contract, and there was never a meeting of the minds or a definite and certain contract for the additional tree work. The record did not show that any violation of the CSPA occurred.

109906 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE M.A.

109907 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE T.G.

Affirmed.

Michelle J. Sheehan, J., Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: R.C. 2151.414(B), permanent custody, sufficiency of evidence.

The trial court's grant of permanent custody of appellant's minor children to the Cuyahoga County Division of Children and Family Services ("CCDCFS") was proper where the court found that the children had been in the custody of CCDCFS for 12 months in a 22-month period, the grant of permanent custody was in the best interests of the children, and the children could not be placed with appellant or their mother within a reasonable time. These findings were properly based on competent, credible evidence that the parents had not completed any of the reunification plans or services.

110043 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE R.K., ET AL.

Affirmed.

Lisa B. Forbes, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Termination of parental rights; permanent custody; R.C. 2151.414; best interest of the children; clear and convincing evidence.

The court's termination of Mother's parental rights and award of custody to the agency was supported by clear and convincing

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evidence in the record. Mother was repeatedly incarcerated and placed in court-ordered, drug-treatment programs. She was unable to provide for her children within the statutory timeframe of two years in the agency's custody.