

September 23, 2021

109608 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SAMUEL A. DANDRIDGE

Affirmed.

Lisa B. Forbes, J., Sean C. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Rape; gross sexual imposition; kidnapping; disseminating matter harmful to juveniles; admissibility of evidence; ineffective assistance of counsel; plain error; lay witness opinion testimony; exclusion of testimony; rape shield law; other acts testimony; sufficiency of the evidence; force; uncorroborated testimony; inconsistent dates of offenses; manifest weight of the evidence; closing arguments; and Fifth Amendment right against self-incrimination.

Jury verdict finding defendant guilty of various offenses relating to the sexual abuse of his girlfriend's daughter from when she was five years old to 15 years old is affirmed. Police officers' testimony did not vouch for the credibility of witnesses; rather, the testimony described the witnesses' demeanor. Rape shield law does not apply to prior false rape accusations. Evidence of grooming a child for sexual abuse may be admitted under Evid.R. 404(B). There was sufficient evidence of force to engage in sexual activity in light of the age difference and familial relationship between the defendant and the victim. A victim's testimony, if believed, is sufficient to support a rape victim. The precise dates of sexual abuse of a child need not be established. We afford great deference to the jury's determination of credibility, and the evidence at trial weighed in favor of defendant's convictions. Defendant failed to show that the prosecutor's comments were improper or that his trial counsel was ineffective. The court's remarks were not prejudicial when it appointed the victim's mother, who testified at trial, an attorney and admonished her about her Fifth Amendment right against self-incrimination.

109827 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v GREGORY MCLEMORE

Affirmed.

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

KEY WORDS: Guilty plea; Crim.R. 11(C)(2)(a); Crim.R. 11(C)(2)(c); plea colloquy; competency; substantial compliance; lack of prejudice; nature of the offenses.

The trial court properly informed the defendant of the various constitutional and nonconstitutional rights he was waiving as well

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as the nature of the offenses in the amended indictment despite not explicitly reciting the elements of the charges to the defendant.

109968 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE P.M.

Reversed and remanded.

Eileen T. Gallagher, J., Frank D. Celebrezze, Jr., P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Custody; grandparents; legal custody; suitable; criminal history; violence; weight of the evidence; competent and credible evidence.

The juvenile court erred in finding that the father was an unsuitable parent and in granting legal custody of the child to the maternal grandparents.

110081 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHAWN JONES

Affirmed.

Larry A. Jones, Sr., J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Rape, motion to dismiss indictments, R.C. 2945.71(C)(2)/speedy trial, dismissal of juror for cause, abuse of discretion, ineffective assistance of counsel.

Appellant filed numerous motions that tolled days prior to trial, and the initial trial date was also affected by the coronavirus pandemic. Although appellant filed a motion to dismiss and challenged the length of the delay, the reasons for the delay are well-documented, and appellant failed to establish any prejudice. Appellant's constitutional right to a speedy trial was not violated.

The trial court was in the best position to assess the juror's fairness and impartiality where the juror stated that he would listen to the facts and probably would be impartial. Appellant's trial counsel chose not to question the juror further, and the trial court did not abuse its discretion where it did not dismiss the juror.

Appellant has failed to show what, if any, information contained in the agency records would have benefited appellant at trial had appellant's counsel subpoenaed the records, or how the social worker's testimony would have benefited appellant. Appellant's assertions alone fail to establish appellant's trial counsel's performance was deficient. Additionally, appellant asserts that trial counsel's failure to address inconsistencies in witness testimony during closing argument was a failure in performance. Closing

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arguments are not evidence, and counsel's performance did not fall below an objective standard of reasonable performance. Counsel also is not ineffective for failing to raise meritless arguments in pretrial motions.

110090 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MATTHEW H. SAID

110288 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v MATTHEW H. SAID

Affirmed.

Frank D. Celebrezze, Jr., J., Sean C. Gallagher, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Motion to withdraw guilty plea; manifest injustice; Crim.R. 32.1; abuse of discretion; hearing; ineffective assistance of counsel.

The trial court did not abuse its discretion in denying appellant's postsentence motion to withdraw his guilty plea.

110149 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CAROLYN F. NEMEC, M.D. v THOMAS MORLEDGE, M.D., ET AL.

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Larry A. Jones, Sr., J., concur.

KEY WORDS: Arbitration; employment contract; procedural unconscionability; hearing.

The trial court did not abuse its discretion in granting the employer's motion to compel arbitration based on the arbitration agreement in the employment contract; nor did it abuse its discretion in granting the motion without an oral hearing because the employee failed to submit evidence to support her opposition to arbitration.

110154 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
KHADIJA SMITH v JAVITCH BLOCK, LLC, ET AL.

Affirmed and remanded.

Sean C. Gallagher, P.J., and Frank D. Celebrezze, Jr., J., concur; Eileen T. Gallagher, J., concurs in

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judgment only.

KEY WORDS: *Arbitration; stay; cardholder agreement.*

Under the express terms of the arbitration agreement, the agent of the creditor was not entitled to invoke the creditor's right to demand arbitration because the terms limited arbitration as between the debtor and the creditor.

110164 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
MICHAEL JAFFE, M.D. v CLEVELAND CLINIC FOUNDATION

Dismissed.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Final orders; R.C. 2505.02(B)(1); Civ.R. 54(B).*

The trial court's order granting the defendant's motion for partial summary judgment is not a final, appealable order under R.C. 2505.02(B)(1). In its order, the trial court found that the defendant could not be liable for its physicians' conduct, but the issue of whether the defendant is liable for the conduct of its nonphysician employees remains pending. The case involves a single claim against a single party, and Civ.R. 54(B) does not apply to transform the order into a final order despite the trial court's use of the language "no just reason for delay."

110167 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v SHERMAN KYLE, III

Reversed and remanded.

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

KEY WORDS: *Restitution; abuse of discretion; R.C. 2929.18.*

Trial court abused its discretion by setting a restitution amount based on the estimate of the victim rather than holding an evidentiary hearing to resolve the objection of defendant to the restitution amount.

110191 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v DONTELLE BROWN

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Affirmed.

Frank D. Celebrezze, Jr., J.; Sean C. Gallagher, P.J., concurs with separate concurring opinion;
Eileen T. Gallagher, J., concurs with majority and concurs with separate concurring opinion.

KEY WORDS: *Jail-time credit; prior offense; postrelease control violation sanction; R.C. 2929.19(B)(2)(g)(i); court costs; R.C. 2937.22; itemization; premature challenge; outside of the record.*

Appellant was not entitled to jail-time credit for the days that he was confined as a sanction for his violation of postrelease control arising from a prior offense and was properly credited with all of the jail-time credit that related to the present offense. The issue of what particular fees and costs were assessed against appellant was outside of the record and could not be considered in appellant's direct appeal.

110192	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v RANDOLPH BROWN			

Affirmed in part and vacated in part.

Mary J. Boyle, A.J., Frank D. Celebrezze, Jr., J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2907.21(A)(3)(a); compelling prostitution; constitutionality; void for vagueness; R.C. 2967.191(A); jail-time credit; GPS home monitoring.*

R.C. 2907.21(A)(3)(a), compelling prostitution, is not unconstitutionally vague for not defining the term "minor" and for criminalizing an offender's conduct even if the offender thinks the victim is a minor, but the victim is actually an adult. R.C. 2907.01(M), which applies to R.C. 2907.21, defines "minor" as "a person under the age of eighteen." If an offender were to knowingly pay or agree to pay someone for sex, and that person were not a minor, the elements for compelling prostitution under R.C. 2907.21(A)(3)(a) would not be met. The defendant was also not entitled to jail-time credit for the days he spent subject to GPS home monitoring. Confinement in a personal residence is not confinement within the meaning of R.C. 2967.191(A).

110207	BOARD OF TAX APPEALS	H	ADMIN APPEAL
SPIRIT MASTER FUNDING IX, LLC, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.			

Affirmed.

Anita Laster Mays, P.J., Larry A. Jones, Sr., J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 5717.04; appeal of Ohio Board of Tax Appeals*

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decision; transfer of limited liability company membership; arm's-length sale of real property.

The Board of Tax Appeals decision to uphold the county's original tax valuation of the property in issue and reject appellant's proposed increase based on the asserted sale price was not unlawful or unreasonable. Appellant failed to provide credible evidence to substantiate that the transfer of the limited liability company membership interests was merely an arm's-length sale of real property only entitled to valuation at the alleged sale price.

110212 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE D.R.

Affirmed.

Lisa B. Forbes, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Bindover; mandatory bindover; R.C. 2152.10; R.C. 2152.12; probable cause; aggravated robbery; R.C. 2911.01; Juv.R. 30; credibility.

The trial court did not err or abuse its discretion in denying the state's motion for mandatory bindover and concluding that the state failed to present sufficient credible evidence to establish probable cause that the juvenile committed the offense of aggravated robbery. The trial court was in the best position to determine the credibility of the testimony presented at the probable cause hearing.

110218 ROCKY RIVER MUNI. G CIVIL MUNI. & CITY
STACY ALCORSO v JASON B. CORRELL

Affirmed.

Eileen A. Gallagher, J., Sean C. Gallagher, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Failure to return security deposit; R.C. 5321.16(C); due process; notice of hearing; reasonable attorney fees; plain error; disproportionate attorney fee award; Prof.Cond.R. 1.5(a).

Defendant landlord did not show that he was denied due process with respect to notice of hearing on attorney fees where the hearing notice and the trial court's docket indicated that defendant's counsel was promptly served with notice of the hearing, the hearing date and time were listed on the trial court's docket, the trial court contacted defendant's counsel regarding his absence the morning of the hearing but no continuance was requested, and there was nothing in the record to support defendant's claim that his counsel

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(Case 110218 continued)

did not receive the hearing notice or otherwise lacked actual or constructive notice of the hearing date. Trial court did not commit plain error in taxing \$26,825 in attorney fees as costs pursuant to R.C. 5321.16(C). R.C. 5321.16(C) permitted recovery of appellate attorney fees. Trial court was not required to distinguish between attorney fees attributable to tenant's security deposit claim and landlord's property damage counterclaim where the claims were virtually indivisible. Simply because the attorney fees incurred were disproportionate to the damages recovered on tenant's security deposit claim did not mean they were unreasonable. Attorney fees awarded were itemized in affidavit, supported by witness testimony and Prof.Cond.R. 1.5(a) factors were addressed.

110237 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v NEIL OSBORNE

Affirmed in part; reversed and remanded in part.

Kathleen Ann Keough, J., Larry A. Jones, Sr., P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2929.13(D); presumption of prison; R.C. 2929.18; restitution; competent, credible evidence.*

Trial court followed the presumption of prison therefore, it was not required to issue any findings pursuant to R.C. 2929.13(D). Trial court's restitution award was not supported by competent, credible evidence and may have been greater than the economic loss suffered as prohibited by R.C. 2929.18.

110351 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE L.S.

Affirmed in part, vacated in part, and remanded.

Eileen A. Gallagher, J., Mary J. Boyle, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Juvenile adjudications; R.C. 2941.25(A); allied offenses of similar import; merger; concurrent sentences; ineffective assistance of counsel; motion to suppress; cold-stand identification; surveillance video; authentication; Evid.R. 901(A).*

Juvenile court erred when it imposed separate, concurrent sentences on robbery and grand theft counts after it determined that they were allied offenses of similar import and merged with aggravated robbery count.

Appellant did not show he was denied effective assistance of counsel based on trial counsel's failure to file a motion to suppress victim's cold-stand identification or failure to object to video CD containing surveillance footage under Evid.R. 901(A).