

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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August 18, 2022

110607 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DELVONTE PHILPOTTS

Affirmed.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Sufficiency of the evidence; manifest weight; allied offenses; aggravated murder; aggravated robbery; firearm specification; R.C. 2929.14(B)(1)(g).*

Appellant's convictions were supported by sufficient evidence and those convictions were not against the manifest weight of the evidence. The state presented sufficient evidence on all elements of the crimes that appellant was convicted of.

Additionally, those convictions were not against the manifest weight of the evidence despite the fact that there was no direct evidence proving that appellant shot the firearm that killed the victim. The state provided evidence that appellant aided and abetted several other men in the robbery and death of the victim. Under Ohio law, a person who aids and abets another on committing a criminal offense is guilty of complicity and can be charged as if they are the principal offender. Therefore, the fact that the state did not present direct evidence that appellant was the shooter does not make his conviction insufficient or against the manifest weight.

Further, the trial court did not err when it sentenced appellant for both aggravated murder and aggravated robbery because the offenses are not allied.

Lastly, the trial court did not err when it sentenced appellant to two firearm specifications for aggravated murder and aggravated robbery because pursuant to R.C. 2929.14(B)(1)(g) the trial court was required to do so. Judgment affirmed.

110962 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
CUYAHOGA COUNTY COURT OF COMMON PLEAS, JUVENILE DIVISION 1 v
LABORERS' LOCAL UNION NO. 860

Affirmed.

Anita Laster Mays, P.J., and Emanuella D. Groves, J., concur; Cornelius J. O'Sullivan, Jr., J., dissents (with separate opinion).

KEY WORDS: *R.C. 2711.09; R.C. 2711.11(B); modify arbitration award; stipulated issue; matter not submitted; exceeded powers;*

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rationally derived; express conflict; collective bargaining agreement; union; Civ.R. 52; findings of fact and conclusions of law.

Trial court's decision to modify a portion of an arbitration award pursuant to R.C. 2711.11(B) is affirmed. Arbitrator awarded upon a matter not submitted by issuing an award that was broader than the stipulated issue. The award expressly conflicted with and was not rationally derived from the terms of the collective bargaining agreement. Appellant was not entitled to findings of fact and conclusions of law under Civ.R. 52.

111058 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
AURELIJA YENNI v GREGORY A. YENNI

Affirmed.

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

KEY WORDS: Grounds for divorce; R.C. 3105.01; notice pleading; Civ.R. 8; corroborating evidence; Civ.R. 75; imputed income; voluntarily underemployed; R.C. 3119.01(C)(17)(a); potential income; App.R. 16(A)(7); App.R. 12(A)(2); disregard an assignment of error; valuation dates; raise objections to the magistrate's decision; plain-error doctrine; Civ.R. 53(D)(3)(b); tax dependency exemption; best interest of the child; R.C. 3119.82; motion for new trial; Civ.R. 59; abuse of discretion; de novo standard of review; request for findings of fact and conclusions of law on motion for new trial.

Appellee-wife presented sufficient evidence to support the trial court's finding that she was entitled to a divorce on the grounds that the parties lived separate and apart for greater than one-year, gross negligence, and extreme cruelty.

The trial court did not abuse its discretion when it imputed income after finding the appellant-husband was voluntarily underemployed and applying the R.C. 3119.01(C)(17) factors.

The reviewing court declines to review assignments of error that the appellant-husband failed to support with legal authority. The trial court did not abuse its discretion when it applied a valuation date other than the actual date of the divorce. Appellant-husband was precluded from raising an argument about spousal support because he did not raise the issue in his objections to the magistrate's decision and he did not invoke plain error on appeal.

The trial court did not demonstrate an abuse of discretion when it allocated the R.C. 3119.82 tax exemption to appellee-wife. The trial court properly denied appellant-husband's motion for a new trial. Further, the trial court was not required under Civ.R. 59 to issue findings of fact and conclusions of law upon the denial of a motion for new trial.

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111060 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DANIEL WOOLF

Affirmed.

Emanuella D. Groves, J., Kathleen Ann Keough, P.J., and Eileen T. Gallagher, concur.

KEY WORDS: *Reagan Tokes; constitutionality; sentencing; presumption of jail; R.C. 2953.08(G)(2).*

Defendant convicted of multiple counts of pandering sexually oriented material involving a minor failed to rebut the presumption of prison for his offenses where the factors that made his crime less serious than others who committed similar crimes, did not outweigh the factors that made his crimes more serious than others. Trial court, therefore, did not err in imposing a prison term.

Indefinite sentence under S.B. 201, the Reagan Tokes Law, was constitutional pursuant to the decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

111174 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DESHAWN D. TYE

Affirmed.

Anita Laster Mays, P.J., Frank Daniel Celebrezze, III, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Sufficiency of the evidence, manifest weight of the evidence.*

The evidence was sufficient to convict the appellant of aggravated robbery and having a weapon while under a disability. The appellant's convictions were not against the manifest weight of the evidence.

111194 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MIGUEL A. GONZALEZ

Affirmed.

Frank Daniel Celebrezze, III, J.; Anita Laster Mays, P.J., concurs in judgment only, and Mary Eileen Kilbane, J., concurs in judgment only.

KEY WORDS: *Menacing by stalking; violation of a protection order; aggravated menacing; manifest weight; Evid.R. 404(B); ineffective assistance of counsel; jury instructions; Evid.R. 701; lay testimony;*

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scope of redirect examination.

Appellant's convictions are affirmed. Appellant's convictions were not against the manifest weight of the evidence. The trial court did not err in giving an Evid.R. 404(B) instruction, permitting lay witness testimony pursuant to Evid.R. 701, and permitting testimony on redirect examination that was elicited in cross-examination and already heard by the jury. Finally, appellant's counsel was not ineffective in failing to object to evidence.

111245	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v QUENTIN A. FORBES			

Vacated and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Conceded error; double jeopardy; DUI.

Appellant was prosecuted for DUI in the municipal court and received probation in the case. He was indicted again for DUI in the common pleas court based on the same incident and was placed on community control. The multiple prosecutions and punishments violated appellant's constitutional right against double jeopardy. The state conceded the error.

111248	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v SHANNON CARANO			

Affirmed.

Frank Daniel Celebrezze, III, P.J., Emanuella D. Groves, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: Reagan Tokes Law; sentencing; indefinite sentence; constitutionality; separation of powers; S.B. 201.

Appellant's sentence under S.B. 201 known as the Reagan Tokes Law was not unconstitutional under the separation-of-powers doctrine pursuant to this court's prior decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

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111368 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: An.M., ET AL.

Affirmed.

Eileen T. Gallagher, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Permanent custody; substance abuse; visitation; parenting; best interest; remedy; case plan; abuse of discretion; termination; parental rights; clear and convincing evidence; legal custody; independent counsel; child's wishes.*

The juvenile court did not err by awarding permanent custody of the father's child to Cuyahoga County Division of Children and Family Services because the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and clear and convincing evidence supported the court's decision granting permanent custody of the child to the agency. The juvenile court did not commit plain error by failing to appoint independent counsel to represent the wishes of the child. Counsel was not ineffective for failing to request the appointment of independent counsel to represent the wishes of the child.