

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 22, 2022

110982 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARVIN HARRIS

Affirmed.

Emanuella D. Groves, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Refreshed recollection; contrary to law; ineffective assistance of counsel; admissibility.*

The trial court acted contrary to law, when it allowed the state to refresh two witnesses' recollections by playing their videotaped statements in open court in front of the jury. Pursuant to Johnson v. Abdullah, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, a trial court is not permitted to make errors of law. However, appellant waived this error by failing to object, subjecting appellate review to the plain error standard. Appellant failed to establish that the outcome of the trial would have been different but for the trial court's error, therefore, he failed to establish plain error.

The trial court abused its discretion when it allowed the admission of the picture of a gun that was not used in the crime, located in a codefendant's home. However, as there was overwhelming evidence of appellant's guilt, the admission was harmless as a matter of law.

Finally, although arguable whether trial counsel exhibited sound trial strategy by failing to object to the presentation of the codefendants videotaped statements to the jury, the record fails to establish that appellant was prejudiced. Judgment affirmed.

111330 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TYRA BYRD

Judgment reversed and conviction vacated; remanded.

Michelle J. Sheehan P.J., and Lisa B. Forbes, J., concur; Emanuella D. Groves, J., concurs (with separate opinion attached).

KEY WORDS: *Motion to suppress; traffic stop; reasonable suspicion; canine sniff.*

Motorist was stopped for crossing the fog line on the right-hand edge of the roadway. During the stop, the officer questioned the motorist as to her direction and purpose of travel. After the officer determined he would issue a warning, he prolonged the stop in order for a canine to come on scene. The canine alerted to the vehicle, and a search revealed a firearm in the car. The initial stop of the motorist was based on a reasonable and articulable

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suspicion that a traffic offense had been committed. Having stopped the motorist, the officer was entitled to detain her for the time sufficient to issue a ticket or warning. In this case, the officer detained the motorist beyond the time he completed the purpose of the stop necessary in order for a canine to arrive. Further, the officer did not articulate facts that supported a reasonable suspicion to prolong the stop for the purpose of a canine sniff.

111374 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
THORSON BAKER & ASSOCIATES, INC. v MARK NICHOLAS AND BROOKS HOLSTEIN, ET AL.

Reversed, vacated, and remanded.

Sean C. Gallagher, A.J.; Lisa B. Forbes, J., concurs in judgment only; Mary Eileen Kilbane, J., dissents with separate opinion.

KEY WORDS: *Personal jurisdiction; breach of contract; personal guarantee; minimum contacts.*

The fact that a nonresident signs a personal guarantee to pay an Ohio corporation for an outstanding debt does not establish the requisite minimum contacts supporting personal jurisdiction over the individual, out-of-state resident in an Ohio forum.

111379 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOSEPH C. ZAKEL v STATE OF OHIO

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Application to remove disability; 18 U.S.C. 922(g)(9); R.C. 2923.14.*

The trial court did not make an error of law when it applied the holding in State ex rel. Suwalski v. Peeler, 167 Ohio St.3d 38, 2021-Ohio-4061, 188 N.E.3d 1048, to deny appellant's application for relief from disability.

A holding of the Ohio Supreme Court is binding on the trial court as well as the court of appeals and is not subject to lower court review. Accordingly, where Suwalski finds that the courts of common pleas do not have authority to relieve someone of a disability obtained pursuant to federal law, the trial court was bound by that finding.

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111390 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHEILA A. MCFARLAND

Affirmed.

Eileen T. Gallagher, J., Sean C. Gallagher, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Motion for leave; new trial; Crim.R. 33(A)(6); newly discovered evidence.*

Trial court properly denied motion for leave to file motion for new trial where the defendant failed to present evidence that, on its face, demonstrated that she was unavoidably prevented from filing a motion for new trial within the 120-day period set forth in Crim.R. 33.

111424 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEMETRIUS STENNETT

Affirmed.

Sean C. Gallagher, A.J.; Michelle J. Sheehan, J., concurs in judgment only; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: *Sexual battery; sentence review; R.C. 2929.11; R.C. 2929.12; R.C. 2953.08; sex offender registration requirements; plea colloquy; Crim.R. 11.*

Affirmed. There is no reversible error in this appeal because there is no practical difference between a 48-month prison sentence and the four-year term imposed; the defendant's sentence cannot be reviewed to determine whether the record supports the sentencing factors or considerations under R.C. 2929.11 and 2929.12; and the trial court's advisement with respect to the sex offender registration requirements was sufficient under Crim.R. 11.

111438 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
PAMELA M. MILLS v PHILLIP W. MILLS

Dismissed.

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

KEY WORDS: *Final, appealable order; determination of spousal support arrearage.*

Judgment entry that does not determine a definite amount of

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spousal support arrearages, provides that a calculation of the arrearages is to be made at a later date, does not provide a definite amount of arrearages in a contempt finding, and which does not provide an amount or date certain by which a contemnor may purge the contempt is not a final, appealable order.

111462 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v EARNEST BROWN

Affirmed.

Mary Eileen Kilbane, J., Sean C. Gallagher, A.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Continuation of final pretrial hearing; abuse of discretion; Reagan Tokes Law, constitutional, indefinite sentence.

The trial court did not abuse its discretion when it denied appellant-defendant's motion for continuance of the final pretrial hearing. Further, the trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of appellant's constitutional rights.

111473 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ARNELL JOHNSON

Affirmed in part, reversed in part, and remanded.

Sean C. Gallagher, A.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: Murder; aggravated murder; attempted murder; felonious assault; discharge of a firearm; having weapons while under disability; shooting; unborn fetus; viable; manifest weight; sufficiency; eyewitness; identification; circumstantial evidence; forensic evidence; DNA; firearm; casings; constitutional right; speedy trial; allied offenses; merger; resentencing. Affirmed in part, reversed in part, and remanded.

The appellant's convictions for aggravated murder, murder, attempted murder, felonious assault, and other offenses, which stemmed from a shooting incident in which a pregnant 19-year-old victim was shot multiple times and her fetus did not survive, were not against the manifest weight of the evidence and were supported by sufficient evidence. Although there was no forensic evidence linking appellant to the crimes and there were some deficiencies in the record, appellant's convictions were supported by the eyewitness testimony that identified appellant as the shooter and the circumstantial evidence that was presented. Testimony from the medical examiner showed that the fetus, which had a gestational age of 24 weeks, was viable at the time of the shooting.

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There was no constitutional violation of the right to a speedy trial. Appellant's sentence was reversed, and the case was remanded solely for resentencing because the trial court erred by failing to merge allied offenses of similar import.