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Court of Appeals, Eighth Appellate District

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January 27, 2022

109867 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v JAMES STEWART

109868 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v LEEANDREW EALOM

Reversed and remanded.

Eileen T. Gallagher, J., Sean C. Gallagher, A.J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Fourth Amendment; seizure; search; warrantless; traffic stop; concealed carry violation; plain view; immediately apparent; inadvertent.*

Trial court erred in granting motion to suppress evidence where traffic stop was constitutionally valid and police observed contraband in plain view.

Fourth Amendment; seizure; search; warrantless; traffic stop; concealed carry violation; plain view; immediately apparent; inadvertent.

Trial court erred in granting motion to suppress evidence where traffic stop was constitutionally valid and police observed contraband in plain view.

110249 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ROMAINE TOLBERT

Affirmed in part, reversed in part and remanded.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Sufficiency of the evidence; R.C. 2929.14(C); consecutive sentences.*

Appellant contended that the state could not produce sufficient evidence to support a conviction for involuntary manslaughter. However, the court found that the state had produced sufficient circumstantial evidence to sustain a conviction as a reasonable juror could have inferred that the victim suffered child abuse in the custody of appellant and the conduct that constituted child abuse also proximately caused the victim's death.

The court sustained appellant's assignment of error with respect to consecutive sentences. The trial court neither expressly made the disproportionality findings required by R.C. 2929.14(C) nor made any statement showing that the court considered those factors using different language.

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110380 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DOUGLAS HECHT v EQUITY TRUST COMPANY

110650 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
DOUGLAS HECHT, INDIVIDUALLY & AS BENEFICIARY v EQUITY TRUST COMPANY

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, J., and Eileen T. Gallagher, J., concur; Sean C. Gallagher, A.J., concurs in judgment only.

KEY WORDS: *Abuse of discretion; Civ.R. 6(B); extension of time; Loc.R. 8(C); stipulated extension; breach of contract; de novo; Civ.R. 10(D)(1); agreement not attached to complaint; Civ.R. 12(E); motion for more definite statement; Civ.R. 12(B)(6); motion to dismiss; matters outside complaint; Civ.R. 56; convert motion to dismiss to motion for summary judgment.*

The trial court did not abuse its discretion in denying the appellant's request for extension of time to respond to the appellee's motion to dismiss after the appellant missed both the initial deadline and the extended deadline. The appellant pleaded facts sufficient to meet elements of breach of contract. The appellant's failure to attach the parties' agreement to the complaint was not fatal. The proper remedy was for appellee to move for a more definite statement. The trial court erred in granting the appellee's motion to dismiss based on matters outside the complaint without converting the appellee's motion to dismiss to a motion for summary judgment.

110462 COMMON PLEAS COURT A CRIMINAL C.P.
STATE OF OHIO v ERIC JACKSON

Affirmed.

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

KEY WORDS: *Motion to suppress; mixed standard of review; Fourth Amendment of the United States Constitution and Article I, Section 14, of the Ohio Constitution guarantee; searches and seizures; police-citizen contact; consensual encounter; Terry stop; arrest; and sufficient reasonable, articulable suspicion.*

We review a trial court's ruling on a motion to suppress under a mixed standard of review. In a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate witness credibility. As the reviewing court, we must accept the trial court's findings of fact in ruling on a motion to suppress if the findings are supported by competent, credible evidence. With respect to the trial court's conclusion of law, the reviewing court applies a de novo standard

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of review and decides whether the facts satisfy the applicable legal standard.

The Fourth Amendment of the United States Constitution and Article I, Section 14 of the Ohio Constitution guarantee “the right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” However, these guarantees are not implicated with every police-citizen contact. Instead, the individual rights are balanced against the type and extent of the intrusion and the other interests involved, such as crime prevention. In balancing these interests, the United States Supreme Court has developed three categories of police-citizen contact - none intended to be used in a bright-line fashion - namely: (1) the consensual encounter, (2) Terry stop, and (3) arrest.

Appellant, state of Ohio, contends that the officer’s initial encounter with appellee was consensual up until the first time Jackson attempted to put his key in the ignition. Appellant also contends that the officer “first observed the extremely strong odor of marijuana by ‘plain smell’ when he initially approached the vehicle, barely entering appellee’s property to do so.”

Upon review, we find nothing in the record to indicate that the police encounter with appellee was consensual. We also find nothing to suggest that the officers possessed sufficient reasonable, articulable suspicion to perform a Terry or investigative stop and to subsequently detain appellee. As such, the trial court properly granted appellee’s motion to suppress.

110486	COMMON PLEAS COURT	A	CRIMINAL C.P.
STATE OF OHIO v ANTHONY WHALEY			

Affirmed.

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

KEY WORDS: *Crim.R. 11; knowingly; intelligently; voluntarily; maximum penalty; prejudice; guilty; plea; felony.*

Defendant was not prejudiced by the court’s inconsistent advisement of the maximum penalties he faced by entering guilty pleas to the felony offenses. Defendant’s decision to enter pleas of guilty was predicated on his desire to accept the terms of a favorable plea agreement and not his alleged misunderstanding of the applicable penalties.

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110560 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STATE OF OHIO v ARIF MAJID

Affirmed.

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

KEY WORDS: *Postconviction relief; R.C. 2953.21(A)(1); de novo; motion to correct; sentence; void; voidable; jurisdiction.*

The trial court lacked jurisdiction to consider defendant's untimely petition for postconviction relief under R.C. 2953.21(A)(1). Under the Ohio Supreme Court's current jurisprudence, any sentencing error would be voidable, not void; and defendant was limited to challenging his sentence via a direct appeal. Therefore, the trial court did not err by summarily denying defendant's motion to correct sentence.

110568 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: O.C.

Reversed and remanded.

Mary Eileen Kilbane, J., and Kathleen Ann Keough, J., concur; Sean C. Gallagher, A.J., dissents with a separate opinion.

KEY WORDS: *Permanent custody; guardian ad litem; legal custody; R.C. 2151.414; best interest; clear and convincing evidence.*

Judgment granting GAL's motion for permanent custody, opposed by CCDCFS and Mother, was not supported by competent and credible evidence. The trial court's findings reiterated testimony from various GALs, some of which was factually inaccurate, and largely ignored the overwhelming balance of evidence in the form of testimony from agency employees and support professionals. The court abused its discretion in denying Mother's motion for legal custody because it was supported by a preponderance of the evidence.

110609 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: V.G.

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Parental rights; permanent custody; clear and*

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convincing evidence; best interest of child; foster parents.

The juvenile court's decision to terminate parental rights and grant permanent custody to CCDCFS was supported by clear and convincing evidence.

Mother failed to engage in the case plan designed to address her mental-health and substance-abuse issues. Father failed to appreciate the severity and the impact that Mother's mental-health and substance-abuse issues would have on the infant child if Father continued to reside in the same home as Mother. Father never obtained independent housing in order to provide safe and appropriate housing for the child.

It was in the child's best interest to remain with the foster parents, where the child had been since her release from the hospital, 31 days after birth, afflicted with numerous serious medical conditions. The record established that the foster mother, a medical professional, was uniquely suited to address and care for a child with such severe medical needs.

110666 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
STEVEN T. OWENS v GIANT EAGLE, INC., ET AL.

Reversed and remanded.

Anita Laster Mays, P.J., Eileen A. Gallagher, J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Summary judgment, workers' compensation, causal connection, arising out of employment.

The trial court's grant of summary judgment in favor of employer was in error where a genuine issue of material fact exists as to the causal connection of appellant's injury to the employment.

110669 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v VELINA GROSS

Reversed and remanded.

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

KEY WORDS: Speedy trial; dismiss; R.C. 2945.71(B)(2); R.C. 2945.71(C)(2); R.C. 2945.72; felony; misdemeanor.

The trial court erred in granting the defendant's motion to dismiss on speedy-trial grounds. Because only 54 days elapsed, the speedy-trial time limits under R.C. 2945.71(B)(2) or (C)(2) were not exceeded. The time between the dismissal of the original felony

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charge and Gross's first appearance on the subsequent misdemeanor charge was not counted in the speedy-trial analysis.

110699 JUVENILE COURT DIVISION F CIVIL C.P.-JUV, DOM, PROBATE
IN RE: Z.M.

Affirmed.

Eileen T. Gallagher, J., and Sean C. Gallagher, A.J., concur; Mary J. Boyle, J., concurs with separate attached opinion.

KEY WORDS: Juvenile-offender registrant; terminate; modify; factors; abuse of discretion; tier II; classification.

The juvenile court did not abuse its discretion by continuing the juvenile's classification as a juvenile-offender registrant and a tier II sex offender.

110708 CLEVELAND MUNI. C CRIMINAL MUNI. & CITY
CITY OF CLEVELAND v CHARLES DAVIS

Reversed, vacated, and remanded.

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

KEY WORDS: Constitutional right to the assistance of counsel; waiver of the right to counsel; knowingly, intelligently, and voluntarily; colloquy; and conceded error.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee that persons brought to trial in any state or federal court must be afforded the right to the assistance of counsel before they can be validly convicted and punished by imprisonment. When a defendant manages his or her own defense, they relinquish, as a purely factual matter, many of the traditional benefits associated with the right to counsel. Therefore, in order to represent themselves, defendants must "knowingly and intelligently" forgo those relinquished benefits.

Appellant argues that the trial court erred in allowing him to proceed to trial pro se without ensuring he had properly waived his Sixth Amendment right to counsel. The City filed a notice of conceded error pursuant to Loc.App.R. 16(B).

Our review of the record, including the colloquy, reveals that the trial court did not discuss with Davis the consequences of waiving counsel, the charges against him, or possible defenses. As such, the inquiry was insufficient to determine whether Davis was making a knowing, intelligent, and voluntary waiver of his right to the assistance of counsel.

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110772 COMMON PLEAS COURT E CIVIL C.P.-NOT JUV,DOM OR PRO
CELINE GANGALE v LORETTA COYNE, ET AL.

Affirmed.

Eileen A. Gallagher, J., Anita Laster Mays, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Motion to quash subpoena duces tecum; Civ.R. 45(C)(3); nonparty; tax returns; financial records; standing; scope of discovery; Civ.R. 26(B)(1)*

Trial court did not abuse its discretion in denying nonparty's motion to quash subpoena duces tecum seeking production of nonparty's tax returns and other financial documents and ordering production pursuant to protective order. Nonparty had standing to file motion to quash subpoena duces tecum served on his accountant based on his personal interest in the documents sought. Trial court did not act unreasonably, arbitrarily or unconscionably in determining that documents at issue were discoverable under Civ.R. 26(B)(1) and 45.