

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

June 23, 2022

110452 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TREAL WHITE

Affirmed.

Emanuella D. Groves, J., and Frank Daniel Celebrezze, III, P.J., concur; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: *Self-defense; weight of the evidence; sufficiency of the evidence; Crim.R. 16(K); ineffective assistance of counsel; motion for new trial; bench trial; plain error; prosecutorial misconduct.*

Sufficient evidence existed to establish that defendant did not act in self-defense where there was evidence to support a finding that appellant was at fault in creating the situation that gave rise to the affray and that he lacked a bona fide belief that he was in imminent danger of death or great bodily harm. Further, the finding that self-defense was not proven was supported by the greater weight of the evidence for the same reasons.

The state violated Crim.R. 16(K) by introducing conclusions from an expert witness that were not included in the report submitted to the defense. However, because the defense failed to object to the testimony, appellant was required to show plain error. As this was a bench trial and the trial court specifically averred that the verdict would have been the same without the offending testimony, appellant failed to establish that the admission affected the outcome of the trial.

Further, appellant failed to establish that he was prejudiced by his counsel's failure to object, so his ineffective assistance of counsel claim also fails.

Prosecutorial misconduct was not shown where defense failed to object preventing the trial court from inquiring as to the reasons for the state's conduct. Nevertheless, the defense failed to show prejudice due to the prosecution's conduct, preventing a finding of prosecutorial misconduct.

Finally, the trial court did not abuse its discretion when it decided to rule on motions for new trial without a hearing and when it denied appellant's motion for new trial.

110753 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAJUAN WILEY

CASE DECISION LIST

Affirmed in part, reversed in part, and remanded.

Kathleen Ann Keough, P.J., Eileen A. Gallagher, J., and Cornelius J. O'Sullivan, Jr., J., concur.

KEY WORDS: *Jury instructions; murder; voluntary manslaughter; harmless error; conviction; ineffective assistance of counsel; pre-arrest silence; castle doctrine; joinder; prejudice; abuse of discretion; jail-time credit; felonious assault; joinder; other acts evidence; allied offenses.*

Trial court erred in not instructing the jury that it could not find the defendant guilty of both murder and voluntary manslaughter requiring retrial; although the state improperly commented on the defendant's prearrest silence, the error was harmless and thus, defense counsel was not ineffective for not objecting to the prosecutor's comments.

The jury instructions included a castle doctrine instruction and correctly instructed the jury regarding the use of self-defense and the duty to retreat; trial court did not abuse its discretion in granting the state's motion for joinder of two indictments against defendant because other acts evidence regarding the offenses charged in one indictment would have been properly admitted at trial of the offenses charged in the other indictment.

Trial court erred by not granting the defendant jail-time credit; trial court erred in sentencing the defendant on both voluntary manslaughter and felonious assault because the offenses were allied offenses that should have merged for sentencing.

110764	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v DAVEION PERRY			

110954	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DAVEION PERRY			

Affirmed in part and dismissed in part.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Aggravated murder; guilty plea; postconviction relief; findings of fact and conclusions of law; finality.*

The trial court's failure to include findings of fact and conclusions of law in a prior judgment denying appellant's petition for postconviction relief did not affect the appealability of the judgment. If a trial court errs by failing to issue statutorily required findings of fact and conclusions of law, the petitioner can obtain relief by raising the deficiency of the trial court's judgment on appeal. Because the prior judgment denying appellant postconviction relief was final, the trial court could not entertain the instant motion for findings of fact and conclusions of law filed by appellant several years after the trial court denied relief.

CASE DECISION LIST

110833 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES W. JONES

111020 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES W. JONES

Affirmed and remanded.

Frank Daniel Celebrezze, III, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2953.08(G)(2); felony sentence review; consecutive sentences; clearly and convincingly contrary to law; findings under R.C. 2929.14(C)(4); failure to incorporate findings into sentencing entry; nunc pro tunc.*

The trial court made the requisite findings during the sentencing hearing under R.C. 2929.14(C)(4), and the findings were clearly and convincingly supported by the record. Further, the imposition of consecutive sentences was not contrary to law. Because the trial court failed to incorporate its findings from the hearing into the sentencing entry, the matter was remanded for the court to issue a nunc pro tunc entry that included all of its findings under R.C. 2929.14(C)(4).

110900 LAKEWOOD MUNI. G Civil Muni. & City
EDWARD HOLMOK v HANNAH BURKE, ET AL.

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Defamation; intentional infliction of emotional distress; judgment on the pleadings; federal Communications Decency Act; immunity.*

Trial court did not err by granting defendant's motion for judgment on the pleadings regarding plaintiff's defamation and intentional infliction of emotion distress claims. Retweeting, without substantially altering or adding to the original message, does not make the plaintiff a "publisher" or "speaker" under the Communications Decency Act. Because the plaintiff is a "user" under the Communications Decency Act, she is immune from liability.

CASE DECISION LIST

110904 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PATRICK JOHNSON

Affirmed.

Emanuella D. Groves, J., Anita Laster Mays, P.J., and Cornelius J. O' Sullivan, Jr., J., concur.

KEY WORDS: *Sentencing, Reagan Tokes, 2967.271, constitutionality, separation of powers, due process, vagueness, plain error.*

Defendant's sentence under 2967.271, the Reagan Tokes Law, was not unconstitutional based on our prior decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.). Failure to raise void for vagueness argument before trial court waived that issue.

110931 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SELENA COLON

Affirmed.

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

KEY WORDS: *Aggravated homicide; aggravated vehicular assault; driving under the influence; sentence; consecutive; felony; findings; R.C. 2929.14(C)(4); course of conduct; factual links; Reagan Tokes Law; constitutional.*

Upheld the trial court's imposition of consecutive sentences where the trial court engaged in the correct analysis, made the findings required by R.C. 2929.14(C)(4), and incorporated those findings into the judgment entry, and the record contained evidence to support the statutory findings for imposing consecutive sentences. Factual links, including time and location of the incident and cause of death, were sufficient to establish that the offenses were committed as a single course of conduct. Constitutional challenges to the Reagan Tokes Law were overruled.

110965 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STERLING CONTRACTING, LLC v MAIN EVENT ENTERTAINMENT, LP ET AL.

Affirmed.

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

KEY WORDS: *Unjust enrichment; equitable relief; subcontractor; derivative claim; Civ.R. 56; summary judgment.*

CASE DECISION LIST

(Case 110965 continued)

Trial court did not err in concluding that there were no genuine issues of material fact on whether the subcontractor demonstrated that it was entitled to restitution from the owner of the property based on the general contractor's breach in failing to pay the amount owing under the subcontractor and general contractor's contract.

110983 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TERRY K. GIANCATERINO

Affirmed.

Eileen A. Gallagher, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, A.J., dissents (with separate opinion).

KEY WORDS: Reagan Tokes Law; indefinite sentence; constitutional challenges; due process; separation of powers; right to jury trial.

Pursuant to the en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.), appellant's constitutional challenges to the Reagan Tokes Law are overruled.

110994 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTOPHER COLLINS

Dismissed.

Mary Eileen Kilbane, J.; Frank Daniel Celebrezze, III, P.J., concurs (with separate concurring opinion); Eileen T. Gallagher, J., concurs with lead opinion and with separate concurring opinion.

KEY WORDS: Community control; medical marijuana; violation hearing; final appealable order; substantial right.

The trial court's journal entry summarizing the probation violation hearing was not a final appealable order because it did not affect a substantial right of the defendant where it neither found that the defendant had violated the terms of his community control nor imposed a sentence for such violation, but instead ordered him to submit to drug testing.

CASE DECISION LIST

111070 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v TRACEE STEELE

Affirmed.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion to vacate void conviction; res judicata.*

Appellant's claim that the state could not reindict him after a prior indictment was dismissed is barred by res judicata because he could have raised this claim on direct appeal.

111315 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STANLEY M. RUSSAW

Affirmed.

Eileen A. Gallagher, J., and Anita Laster Mays, J., concur; Sean C. Gallagher, A.J., concurs in judgment only (with separate opinion).

KEY WORDS: *Manifest weight of the evidence; right to due process; jury instructions; ineffective assistance of counsel; trial strategy and tactics.*

Appellant appealed his convictions for rape, sexual battery and gross sexual imposition contending that his conviction was against the manifest weight of the evidence. The court held that any inconsistency in the victim's testimony did not render the victim's testimony so out of the realm of possibility that it lacked credibility. Appellant next argued that the trial court plainly erred by charging the jury with the elements of the offenses after the victim testified. Appellant also contended that his counsel provided ineffective assistance in failing to object to the charge and in failing to move to strike inadmissible opinion testimony. However, the court held that the appellant could not show that the outcome of the trial would have been different but for the assigned errors. Accordingly, the court overruled appellant's assigned errors and affirmed the judgment of the trial court.