

August 10, 2023

111672 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CORDELL POWELL

Affirmed.

Emanuella D. Groves, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Sufficiency; weight of the evidence; ineffective assistance of counsel; expert testimony; consecutive sentences.*

Appellant's convictions were supported by the sufficiency of the evidence and the manifest weight where circumstantial evidence affirmatively linked him to the crime.

The trial court did not abuse its discretion when it allowed in evidence of appellant's subsequent shooting that left him paralyzed. Although there was potential for prejudice, the information was relevant, and the probative value outweighed any prejudicial effect.

The trial court did not abuse its discretion by allowing the introduction of a jail call that was disclosed to the defense on the day before the trial. The call was made two months prior to trial, and appellant used another inmates PIN to make the call. Additionally, the content of the call was admissible as an admission and as consciousness of guilt where appellant tried to persuade a state's witness from coming to court.

The trial court did not abuse its discretion by limiting the cross-examination of a state's witness regarding a prior inconsistent statement. The statement was an exculpatory statement allegedly made by appellant, and there was insufficient evidence to determine the admissibility of the statement under any of the other hearsay exceptions. The trial court's decision was within its discretion as gatekeeper of the evidence.

Appellant did not receive ineffective assistance of counsel where counsel did not object to the testimony of the state's expert. The defense received the expert report and video that was the primary basis of his testimony. Further, there was sufficient testimony in the record to determine the reliability of the expert's testimony and methods. Finally, a court should give deference to the strategic decisions of counsel. The expert in question had extensive experience in his field and had been qualified to testify multiple times. Counsel may have determined that an objection would be fruitless.

Trial court did not err in imposing sentences for two firearm specifications when the underlying offense for one had merged into the underlying offense for the other. Additionally, the trial court made the requisite findings to justify consecutive sentences for appellant's remaining charges.

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(Case 111672 continued)

The trial court did not err in allowing the remote testimony of a state's witness, where the trial court asked the parties whether they objected, the defense agreed to the arrangement, and had a representative in the hospital room. Further, the appellant failed to raise or argue plain error.

111692 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL MEHWALD v ATLANTIC TOOL & DIE COMPANY, ET AL.

111901 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL MEHWALD v ATLANTIC TOOL & DIE COMPANY, ET AL.

111904 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL MEHWALD v ATLANTIC TOOL & DIE, ET AL.

Vacated and remanded.

Mary J. Boyle, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Appointment of receiver; close corporation; privity; final appealable order; attorney-client privilege; work-product doctrine; consulting-expert privilege.

Judgments vacated and case remanded. In this consolidated appeal, the trial court (1) abused its discretion by appointing a receiver under the unique facts and circumstances of this case; (2) erred in extending the attorney-client relationship to a minority shareholding in a close corporation on the basis of privity, entitling him to any and all communications, records, or files, privileged or otherwise, between the close corporation and its counsel; and (3) abused its discretion by ordering the disclosure of all documents that the close corporation claimed to be protected by the work-product doctrine and consulting-expert privilege based on its finding that the minority shareholder shared in those privileges.

111909 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
MARCIA MEEHAN, TRUSTEE & BENEFICIARY v TIMOTHY MEEHAN, ET AL.

111910 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
MARCIA MEEHAN, TRUSTEE & BENEFICIARY v TIMOTHY MEEHAN, ET AL.

Affirmed.

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

KEY WORDS: De novo standard of review; declaratory judgment action; enforcement of trusts; trust reformation; R.C. 5804.15; mistake of fact or law; settlor's intention; irrevocable noncharitable trust; consent of settlor and beneficiaries; material purpose of the

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(Case 111910 continued)

trust; termination of a trust; modification of a trust; adequate protection of beneficiaries; clear and convincing evidence; settlor's original intent; mistake of expression; R.C. 5804.11; R.C. 5804.11(A); R.C. 5804.11(B); R.C. 5804.11(D).

Judgment affirmed. A trial court, acting as the trier of fact, benefits from observing witnesses at trial and assessing their credibility. Therefore, an appellate court defers to the trial court's findings on credibility. Equity courts have the important function of assisting in the enforcement and administration of trusts, ensuring the fulfillment of the creators' expressed intent regarding dispositive provisions, directions, methods, and administration details followed by the trustee. The court possesses wide authority to reform a trust under R.C. 5804.15, allowing the reformation of trust terms, even if unambiguous, to align with the settlor's intention when clear and convincing evidence proves a mistake of fact or law affecting both the settlor's intent and the terms of the trust.

112117	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
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KEVIN KESS v ABDUL KHAN, ET AL.

Affirmed.

Kathleen Ann Keough, P.J., Michelle J. Sheehan, J., and Michael John Ryan, J., concur.

KEY WORDS: Summary judgment; reconsideration; Evid.R. 408; basement; cracking; as is; contingency; inspection; open and obvious; engineer.

Trial court had authority to reconsider its prior denial of summary judgment. Documents produced in anticipation of a settlement conference do not fall under the protection of Evid.R. 408 because they were not offered to show settlement or compromise. Trial court did not err in granting summary judgment to sellers when the evidence showed that the buyer removed all contingencies following a home inspection, purchasing the home as is. Buyer chose not to consult with an engineer as recommended by the inspector after the inspection revealed the presence of abnormal cracking in the foundation walls. Buyer admitted that the cracks were open and obvious.

112124	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v FRANK BUKOVEC, JR.

Reversed; vacated; and remanded.

Lisa B. Forbes, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

KEY WORDS: Misdemeanor sentencing; community-control

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(Case 112124 continued)

sanctions; suspended jail sentence; community-control sanctions violations.

The trial court erred when it continued the defendant's community-control sanctions upon his release from jail after he served the entirety of his reimposed, maximum suspended sentence, because the defendant's community-control sanctions terminated by operation of law in this case.

112140 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JAMIL A. SHABAZZ

Affirmed.

Anita Laster Mays, A.J., Frank Daniel Celebrezze, III, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: Res judicata.

Appellant's assignments of error are barred by res judicata.

112204 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH GRIFFIN

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: Motion to withdraw guilty plea; Crim.R. 32.1; change of heart; abuse of discretion; Reagan Tokes Law; constitutionality; mandatory sentencing advisements; R.C. 2929.19(B)(2)(c).

Defendant entered into plea bargain with state and was sentenced to an indefinite prison term pursuant to the Reagan Tokes Law. Defendant filed motion to withdraw plea alleging he was misled by counsel as to the probable sentence the court would impose. The trial court appointed new counsel for defendant and held a hearing on motion to withdraw plea. Trial court did not abuse its discretion denying motion to withdraw plea. When entering his plea, defendant was represented by counsel and the trial court complied with Crim.R. 11. The trial court held a hearing on the motion to withdraw the plea and gave full and fair consideration to the plea-withdrawal request. Defendant premised his motion upon his claim that he expected a particular sentence, but acknowledged at the plea hearing that he understood no promises were made. As such, the trial court did not abuse its discretion in denying the motion to withdraw plea where a mere change of heart is insufficient justification to allow withdrawal of a plea.

The arguments raised by defendant that the Reagan Tokes Law is

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(Case 112204 continued)

unconstitutional have been overruled. However, in imposing the sentence under the Reagan Tokes Law, the trial court did not advise defendant of all advisements contained in R.C. 2929.19(B)(2)(c). The convictions are affirmed but remanded for resentencing solely to provide the required advisements.