

CASE DECISION LIST

August 24, 2023

111978 LYNDHURST MUNI. G Civil Muni. & City
NICOLET EDWARDS v CHORRETHEERS JENKINS, ET AL.

Reversed and remanded.

Frank Daniel Celebrezze, III, J., and Anita Laster Mays, A.J., concur; Michelle J. Sheehan, J., concurs in judgment only.

KEY WORDS: *Forcible entry and detainer; magistrate's decision; objections; independent review of magistrate's decision; Civ.R. 53(D)(4)(d); transcript; audio recording.*

Judgment reversed and remanded. Based on the record and the face of the tenants' objections, the trial court could not have meaningfully reviewed the tenants' objections to the magistrate's decision without the audio recording of the hearing before the magistrate. The record indicated that tenant had requested a copy of the audio recording prior to filing objections and the objections were based on factual findings that would have been elicited at the hearing before the magistrate. Therefore, independent review of the audio recording was necessary to rule on tenants' objections.

112004 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ASSANTE DAVENPORT

112005 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ASSANTE DAVENPORT

Affirmed.

Emanuella D. Groves, J., and Michelle J. Sheehan, P.J., concur; Sean C. Gallagher, J., concurs (with separate opinion).

KEY WORDS: *Weight and sufficiency of the evidence; prejudicial joinder; imposition of consecutive sentences.*

Trial court did not abuse its discretion when denying a motion to sever indictments where the law favors joinder, the evidence was simple and direct, and appellant did not establish that he was prejudiced by the joinder.

Appellant's convictions for tampering with evidence, failure to comply, improper handling of a firearm in a motor vehicle, felonious assault, and discharge of a firearm on or near prohibited were supported by sufficient evidence where there was clear evidence presented as to the element of each crime, plus video surveillance, body camera footage, and other evidence presented at trial.

Appellant's convictions were supported by the greater weight of the

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(Case 112005 continued)

evidence where the testimony was supported by physical, video, and oral testimony. The jury did not lose its way or create a manifest injustice.

Defendant failed to preserve disproportionality challenge to the imposition of consecutive sentences.

112030	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
BETHANY HALE, ET AL. v JOHN P. TOTH, ET AL.			

Reversed and remanded.

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

KEY WORDS: Summary judgment; de novo; R.C. Chapter 2744; political subdivision immunity; three-tiered analysis; exceptions to immunity; willful, wanton, and reckless conduct; individual capacity; official capacity; final appealable order; jurisdiction; motion for judgment on pleadings; declaratory judgment; constitutionality.

Judgment is reversed and remanded. Because the errors alleged by defendants in their motion for judgment on the pleadings do not involve claims of immunity, this portion of the interlocutory appeal cannot be addressed for lack of final appealable order. We likewise cannot address the trial court's denial of summary judgment as it relates to Count 6 of plaintiff's complaint seeking a declaratory judgment that R.C. Chapter 2744 violates plaintiff's constitutional rights to due process and equal protection. After construing the evidence most favorably for the plaintiff, reasonable minds can reach only one conclusion - there are no genuine issues of material fact and the defendants are entitled to summary judgment as a matter of law. The record is devoid of any evidence demonstrating that any of the exceptions to immunity set forth in R.C. 2744.02(B) apply to expose the city to liability, and the officers acted with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, the trial court's judgment denying the defendants' motion for summary judgment on immunity grounds is reversed.

112116	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v LUIS A. CANDELARIO			

Reversed, vacated and remanded.

Emanuella D. Groves, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

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

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(Case 112116 continued)

Trial court erred when it failed to impose an indefinite sentence as required under the Reagan Tokes Law, S.B. 201. Furthermore, pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535, appellee’s constitutional challenges to the Reagan Tokes Law are overruled.

112125 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHARLES POOLE, JR.

Reversed, vacated and remanded.

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

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

Trial court erred when it failed to impose an indefinite sentence as required under the Reagan Tokes Law, S.B. 201. Furthermore, pursuant to State v. Hacker, Slip Opinion No. 2023-Ohio-2535, appellee’s constitutional challenges to the Reagan Tokes Law are overruled.

112179 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SAUL SIMMONS

Dismissed.

Michael John Ryan, J., Michelle J. Sheehan, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Anders brief; menacing by stalking; criminal damaging; history between the defendant and victim; due process; Crim.R. 29; pattern of conduct; knowingly cause another person to believe that the offender will cause physical harm or mental distress; cause or create risk of physical harm to another’s property without their consent.

The trial court did not abuse its discretion by allowing the state to introduce other acts evidence to demonstrate why, based on the victim’s history with the defendant, she believed he would cause her physical harm or mental distress. Further, the court specifically instructed the jury that the evidence was to be considered for that limited purpose.

There was no due process violation as the defendant was on notice from the indictment (i.e., the furthermore clause attendant to Count 1) that his “history of violence toward the victim” was a subject of the within prosecution.

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(Case 112179 continued)

The state presented sufficient evidence to support the menacing charges. The evidence demonstrated more than two incidents, closely related in time and within the timeframe set forth in the indictment, involving the defendant and the victim whereby a jury could find that the defendant engaged in a pattern of conduct knowing it would cause the victim fear of physical harm or mental distress.

The state presented sufficient evidence to support the criminal damaging charge. The evidence demonstrated that the defendant was at the victim's residence on the date in question without her consent and threw something at her window, causing damage to it.

There are no meritorious, nonfrivolous issues for our review with respect to the defendant's conviction. This appeal is wholly frivolous, counsel's motion to withdraw is granted, and the appeal is dismissed.

112200	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v GEORGE GLEASON			

Affirmed.

Emanuella D. Groves, J., and Eileen A. Gallagher, P.J., concur; Lisa B. Forbes, J., concurs in judgment only.

KEY WORDS: Misdemeanor sentencing; consecutive sentences.

Appellant failed to demonstrate that trial court failed to consider the misdemeanor sentencing guidelines when it imposed consecutive sentences on him.

112222	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v ORLANDO BURGOS			

Affirmed.

Emanuella D. Groves, J., Eileen A. Gallagher, P.J., and Lisa B. Forbes, J., concur.

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

Trial court did not err when it imposed an indefinite sentence as required under the Reagan Tokes Law, S.B. 201.

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112239 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: I.L.J.

Affirmed.

Kathleen Ann Keough, P.J., Eileen T. Gallagher, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Contempt; retroactive modification of child support order; special circumstance; willful and knowing violation of parenting agreement; guardian ad litem's report; modifications to parenting agreement.*

Trial court did not abuse its discretion in not finding Mother in contempt for not reporting the availability of private health insurance to the agency while the minor child was covered by Medicaid and in denying Father's motion for retroactive modification of child support based on Mother's fraud in not reporting the private health insurance where Mother's actions were not fraudulent and, in fact, were no different than Father's; trial court did not abuse its discretion in finding Father in contempt for violating the parenting agreement regarding holiday visitation with the minor child where Father knowingly secreted the child from Mother after his parenting time was over; Father waived all but plain error regarding the guardian ad litem's failure to submit her report until after the evidentiary hearing, and there was no plain error because Father agreed to the late submission; because the trial court complied with the requirements of R.C. 3109.04(E)(2)(b), it did not abuse its discretion in modifying the parenting agreement.

112293 COMMON PLEAS COURT A Criminal C.P.

STATE OF OHIO v FARHAD NOORI

Affirmed.

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

KEY WORDS: *R.C. 2953.08(G)(2); modify sentence; contrary to the law; purposes and principles of felony sentencing; R.C. 2929.11; R.C. 2929.12.*

The imposed sentence was not contrary to law where appellant's sentence was within the statutory range, and the record reflected the trial court considered the purposes and principles of felony sentencing in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.

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112422	ROCKY RIVER MUNI.	C	Criminal Muni. & City
CITY OF ROCKY RIVER v ROBERT LANDERS			

Affirmed.

Eileen A. Gallagher, P.J., and Emanuella D. Groves, J., concur; Lisa B. Forbes, J., dissents (with separate opinion).

KEY WORDS: *Motion to dismiss; Rocky River Codified Ordinances 335.12(a); R.C. 4549.02(A)(1); conflict; Home Rule Amendment; Ohio Constitution, Article XVIII, Section 3; invalid.*

Trial court did not err in dismissing charge against defendant for violation of Rocky River Codified Ordinances 335.12(a) after he allegedly left the scene of a motor vehicle accident without contacting and waiting for police. Ordinance conflicted with R.C. 4549.02(A)(1) because the ordinance prohibited what the statute permitted - i.e., leaving the scene of a noninjury accident without contacting police and waiting for police to arrive - and was, therefore, invalid.