

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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February 2, 2023

111201 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RAPHELLE D. WINEGARNER

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

KEY WORDS: *Indictment; probable cause; R.C. 2945.37; competency hearing; sufficient indicia of incompetency; sufficiency of the evidence; attempted murder; manifest weight of the evidence; credibility of witnesses.*

Defendant was convicted of attempted murder, felonious assault, weapons while under disability, discharge of a firearm on or near prohibited premises, improperly handling a firearm in a motor vehicle, and carrying a concealed weapon. Defendant's challenge that the indictments were not based upon probable cause is not well taken where the indictments are valid on their face. Trial court erred by not holding a hearing to determine defendant's competency where competency report did not determine whether defendant could assist counsel. Because the record does not contain sufficient evidence of incompetency regarding defendant's ability to assist counsel, the error by the trial court was harmless. There was sufficient evidence of the charge of attempted murder where the victim was shot in the leg causing life-threatening injury and the defendant fired three more times at the victim before leaving the scene. The convictions were not against the manifest weight of the evidence where the identification of the defendant by eyewitnesses was corroborated by other evidence and it was within the jury's province to evaluate the credibility of the witnesses even though they had initially identified another suspect.

111249 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
1415 KENILWORTH, LLC v CITY OF CLEVELAND, OHIO, ET AL.

Affirmed.

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

KEY WORDS: *Zoning appeals; practical difficulty; area variance; R.C. Chapter 2506.*

The trial court's decision affirming the Cleveland Board of Zoning Appeals ("BZA") is affirmed. The appellant did not demonstrate that the BZA's decision was unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by a preponderance of substantial, reliable, and probative evidence.

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111410 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ALFONZO L. THURMAN

Reversed and vacated.

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

KEY WORDS: *Speedy trial rights; R.C. 2945.71.*

The trial court violated the appellant's speedy trial rights because the appellant was not brought to trial within 90 days of his arrest in accordance with R.C. 2945.71.

111425 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEANGELO E. THOMAS

Affirmed.

Eileen T. Gallagher, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

KEY WORDS: *Sufficiency; manifest weight; Crim.R. 16; discovery violation; hearsay; excited utterance; aggravated murder; aggravated burglary; felonious assault; having weapons while under disability; Reagan Tokes Law; ineffective assistance of counsel.*

Defendant's convictions were supported by sufficient evidence and were not against the manifest weight of the evidence where the victim testified that she saw the defendant shoot and kill the victim while trespassing in her apartment. The state's delayed disclosure of the defendant's incriminating statements to a witness did not constitute a willful discovery violation in violation of Crim.R. 16 where the witness disclosed the evidence to the prosecutor during the trial. The indefinite sentence imposed on defendant pursuant to the Reagan Tokes Law was constitutional. Defendant could not establish a claim for ineffective assistance of counsel due to counsel's failure to object to imposition of the sentence under the Reagan Tokes Law because he could challenge the sentence in a postconviction proceeding if the Reagan Tokes Law is declared unconstitutional and therefore, he was not prejudiced by the failure to object.

111428 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANDERSON BAIRD, SR.

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Affirmed.

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

KEY WORDS: *Abuse of discretion; Evid.R. 404(B); motion for mistrial; hearsay; confrontational clause.*

The trial court did not err or abuse its discretion by permitting the appellee to introduce evidence of prior bad acts in violation of Evid.R. 404(B) because the testimony did not affect the appellant's substantial rights. The trial court did not err in denying the appellant's motion for a mistrial because the trial court provided a curative instruction to the jury. The trial court did not err by permitting jurors to hear hearsay evidence because the testimony was not in violation of the appellant's constitutional right to confrontation.

111463	BEDFORD MUNI.	C	Criminal Muni. & City
CITY OF SOLON v MICHAEL A. DEPEW			

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Ineffective assistance of counsel; conflict of interest; affidavit of disqualification; no contest plea; Crim.R. 11(B)(2).*

Failure of defendant's first attorney to disclose that he was under investigation by the Ohio Supreme Court for professional misconduct was not ineffective assistance of counsel where defendant failed to demonstrate the investigation created a conflict of interest between him and his lawyer; failure of defendant's second attorney to file an affidavit of disqualification was not ineffective assistance of counsel where there was no evidence the trial court judge was disqualified in any way to preside in the proceedings; the trial court did not violate Crim.R. 11(B)(2) where it found the defendant guilty of disorderly conduct after the defendant pleaded no contest to the charge and there was no evidence the trial court considered the guilty verdict in that case in rendering its verdict in a bench trial involving the defendant in another case.

111477	PARMA MUNI.	C	Criminal Muni. & City
CITY OF PARMA v IOAN TARTAN			

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Mary J. Boyle, J., concur; Kathleen Ann Keough, J., concurs (with separate opinion attached).

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KEY WORDS: Motion to suppress; OVI; probable cause to arrest; competent and credible evidence; totality of the facts and circumstances within a police officer's knowledge; traffic violation; odor of alcohol; glassy, bloodshot eyes.

Based upon the totality of the facts and circumstances, including witnessing appellant commit a traffic violation and drive erratically, and the observation of an odor of alcohol on appellant's person, his glassy, bloodshot eyes, and unsteady gait, the officers had sufficient information to cause a prudent person to believe that appellant was driving while intoxicated. The trial court did not err in finding that the officers had probable cause to arrest appellant for OVI.

111493	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MARK A. SAXON, JR.			

Affirmed.

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

KEY WORDS: *Consecutive sentences; de novo review of findings; clearly and convincingly supported by the record; postrelease control.*

The trial court's findings in support of consecutive sentences were clearly and convincingly supported by the record.

The trial court did not commit plain error by running the consecutive sentence on defendant's felony convictions consecutive to his sentence on the postrelease-control violation.

111506	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TIFFANY GARDNER			

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Murder; felonious assault; complicity; jail calls; sufficiency of evidence; manifest weight of evidence; Evid.R. 801(D)(2); ineffective assistance of counsel.*

Appellant's conviction for murder and felonious assault were supported by sufficient evidence and were not against the weight of evidence. The evidence demonstrated that appellant was complicitous in procuring two males to assault the victim. The appellant stayed on the scene while the assault occurred and left with the two men when it was over. The victim died as a result of

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the injuries he suffered during the assault.

**Recorded jail calls were properly admitted under Evid.R. 801(D)(2).
Counsel was not ineffective for failing to object to the calls.**

111509 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT CRAMER

Dismissed.

Anita Laster Mays, A.J., Eileen T. Gallagher, J., and Michael John Ryan, J., concur.

KEY WORDS: Anders; Crim.R. 11; psychiatric reports.

The trial court granted counsel's motion to withdraw because the record reflected that defendant pleaded guilty knowingly, intelligently, and voluntarily, and the court met the Crim.R. 11 requirements prior to accepting his guilty plea. The trial court did not abuse its discretion by denying a psychiatric report. The court agreed with appointed counsel that any error raised on appeal would be wholly frivolous. Thus, pursuant to Anders v. California, counsel's request to withdraw was granted, and the appeal was dismissed.

111518 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TODD BENJAMIN ROLINC v NICOY WILLIAMS, ET AL.

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: Summary judgment; negligence; dog bite; insurance coverage; declaratory judgment.

Exclusion in an insurance policy did not apply when the dog did not have an "established" history of biting or attacking on the date the dog bit and attacked the plaintiff. A subsequent police report did not "establish" a history of biting or attacking for insurance purposes.

111546 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VONDEL T. MURRAY

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Affirmed and remanded.

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

KEY WORDS: *Reagan Tokes Law; constitutional; indefinite sentence; nunc pro tunc; clerical error.*

The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of appellant-defendant's constitutional rights. The case is remanded for the trial court to issue a nunc pro tunc sentencing judgment entry that corrects a clerical error.

111547	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TONY JORDAN			

Affirmed.

Sean C. Gallagher, J., and Anita Laster Mays, A.J., concur; Kathleen Ann Keough, J., concurs in judgment only.

KEY WORDS: *Robbery, R.C. 2911.01; grand theft; R.C. 2913.02; aggravated robbery; R.C. 2911.01; bindover; discretionary transfer; amenability hearing; Reagan Tokes Law.*

Affirmed. The trial court did not abuse its discretion in finding amenability factors favoring the transfer of the case to the general division court outweighed those factors that weighed against the transfer.

111582	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN FONTANEZ			

111584	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN FONTANEZ			

111585	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN FONTANEZ			

111586	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN FONTANEZ			

111587	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v JUAN FONTANEZ			

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; S.B. 201; indefinite sentence;*

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felony; constitutional; separation-of-powers doctrine.

The trial court properly imposed an indefinite sentence to the Reagan Tokes Law, and this court overruled appellant's challenges to the constitutionality of the Reagan Tokes Law en banc in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 356 (8th Dist.).

111592 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ANN MARIE GRIMBERG v BLACKBIRD BAKING COMPANY, ET AL.

Affirmed.

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

KEY WORDS: Summary judgment; negligence; negligence per se; natural accumulation of ice and snow; substantially dangerous condition; no-duty winter rule; open and obvious; motion to amend complaint; prima facie case.

Trial court acted within its discretion in denying motion to amend complaint where plaintiff failed to present evidence establishing a prima facie case for the claims she sought to have added.

Trial court properly granted summary judgment in defendants' favor where plaintiff slipped and fell on a natural accumulation of ice and snow, she failed to present evidence of a substantially dangerous condition that preclude application of the no-duty winter rule, and plaintiff admitted that she was aware of minor defects in the parking lot prior to her fall.

111594 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TIMOTHY D. KASSOUF v THEODORE BARYLAK, JR., ET AL.

Reversed and remanded.

Sean C. Gallagher, J., Anita Laster Mays, A.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: Default judgment; settlement; remaining claims; stipulation; dismissal; final, appealable order; Civ.R. 60(B); untimely; abuse of discretion; vacate; void; jurisdiction; service; presumption; rebut; uncontroverted; affidavit; residing; hearing; remand.

Reversed trial court's denial of the defendant-appellant's motion for relief from a default judgment where the appellant alleged a lack of proper service and provided an uncontroverted affidavit with supporting materials sufficient to warrant a hearing. Because a judgment rendered without proper service or entry of appearance is

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a nullity and void, the defendant was not required to satisfy the requirements of Civ.R. 60(B) and the trial court abused its discretion in denying the motion as untimely. Additionally, the default judgment was rendered a final, appealable order when the trial court dismissed the case with prejudice upon a stipulation entered following the settlement of the plaintiff's remaining claims against the defendant insurers. The matter was remanded for an evidentiary hearing on the appellant's motion.

111934 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v CATHERINE D. TOTH

Affirmed.

Frank Daniel Celebrezze, III, P.J., Kathleen Ann Keough, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Disorderly conduct; minor misdemeanor; App.R. 16; Crim.R. 11(E); no-contest plea; R.C. 2937.07; ineffective assistance of counsel; trial strategy; double jeopardy; Crim.R. 32(C); App.R. 12.*

Judgment affirmed. The trial court did not err in accepting the defendant's no-contest plea. The trial court properly advised the defendant pursuant to Crim.R. 11 and the record reveals that after such advisement, defendant voluntarily entered the no-contest plea. The defendant did not receive ineffective assistance of counsel where all of counsel's conduct that defendant took issue with fell into the category of trial strategy that fell within the range of reasonable professional assistance. The defendant's double jeopardy protections were not violated where the trial court's initial finding of "not guilty" was not reduced to writing and journalized. Finally, defendant's failure to fully brief a proper substantive due process argument allowed this court to disregard it pursuant to App.R. 12(A).

111974 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: M.S.K.

Affirmed.

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

KEY WORDS: *Termination of parental rights; permanent custody; manifest weight of the evidence; competent, credible evidence; R.C. 2151.414; clear and convincing evidence; child could not or should not be placed with parent; failure to substantially remedy the conditions causing removal; chronic chemical dependency; involuntary termination of other siblings; best interest of the child; abuse of discretion; guardian ad litem recommendation; temporary*

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custody.

The juvenile court's judgment awarding permanent custody to the agency was not against the manifest weight of the evidence, and it did not abuse its discretion in declining to award temporary custody rather than permanent custody. Clear and convincing evidence supported the juvenile court's findings and determination that permanent custody was in the best interest of M.S.K.

111997	JUVENILE COURT DIVISION	F	Civil C.P.-Juv, Dom, Probate
IN RE: T.Y.			

Affirmed.

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

KEY WORDS: Permanent custody; dependent; temporary custody; case plan; counseling; parenting education; best interests; abuse of discretion; manifest weight; due process.

The juvenile court's award of permanent custody to CCDCFS is supported by clear and convincing evidence in the record and is not against the manifest weight of the evidence. The juvenile court did not violate Mother's due-process rights by considering information that was cumulative to the testimony adduced at the permanent-custody hearing.