

July 6, 2023

111725 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MACKENZIE WAINWRIGHT

Reversed, vacated, and remanded.

Mary Eileen Kilbane, P.J., Mary J. Boyle, J., and Michael John Ryan, J., concur.

KEY WORDS: *Rape; gross sexual imposition; Crim.R. 16; mistrial; discovery violation; abuse of discretion; credibility.*

The trial court abused its discretion in denying defendant-appellant's request for a mistrial based on a discovery violation in the form of failing to disclose a 46-minute video of the alleged victim's statement to law enforcement until the trial was nearly over.

111747 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: J.O.

Affirmed in part, vacated in part, and remanded.

Anita Laster Mays, A.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Sufficiency of the evidence; manifest weight of the evidence; unsworn testimony; plain error; ineffective assistance of counsel; merger and allied offenses; written findings of fact and conclusions; lesser included offense of felonious assault; and incorrect journal entry.*

The evidence was sufficient and not against the manifest weight to adjudicate delinquent the appellant on felonious assault and tampering with evidence. Because trial counsel did not object to the unsworn testimony of the victim, we reviewed for plain error. Plain error was not found because the testimony did not affect the outcome of the trial. Trial counsel's assistance was not ineffective because it did not prejudice the appellant. The trial court erred when it did not merge the delinquency adjudications and disposition of the allied offenses. The trial court did not err by not issuing a written findings of fact and conclusions because the record was complete in the trial court's justification of its ruling. The trial court did not err when it did not adjudicate delinquency on the appellant of the lesser included offense of felonious assault because the appellant knowingly caused physical harm to the victim using a firearm. Upon a new disposition hearing, the trial court will issue a new journal entry.

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111837 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v IRAKOZE ABUDU

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 14; simple and direct; suppress; impermissibly suggestive; pretrial identification; creation; photo array; skin tone; hairstyle; physical evidence; Reagan Tokes Law.*

Trial court did not abuse its discretion in denying defendant's motion to sever because the evidence regarding the two incidents was simple and direct and thus satisfied the joinder test. Motion to suppress properly denied where detective followed procedures and protocol adopted by police department. Photo array not impermissibly suggestive because the different skin tones and hairstyles of the males in the filler photographs were not significant to be prejudicial. Lack of physical evidence is not fatal to state's case where eyewitnesses identify defendant as the shooter.

111900 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v QUENTIN FIPS

Reversed.

Michael John Ryan, J.; Kathleen Ann Keough, P.J., concurs in judgment only (with separate opinion); and Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: *Traffic stop; inoperable headlight; mistake, continued detention; motion to suppress.*

The record supports the trial court's finding that the traffic stop was legal. The police had an objectively reasonable belief based on the circumstances known to them at the time of the stop that there was an equipment failure, which was an inoperable headlight. Based on that belief, the police conducted a legal traffic stop. Further, the stop was proper even in light of the police's mistaken belief that the headlight was out. However, once the police were aware of their mistake the continued detention of the defendant was improper. The police did not have an independent basis to extend the detention by asking for the defendant's identification and the defendant's motion to suppress should have been granted.

CASE DECISION LIST

111922 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JASHON WILLIAMS

Affirmed.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Separation of witnesses; Evid.R. 615; motion for a mistrial; identity; sufficiency of the evidence; manifest weight of the evidence; cumulative error; Reagan Tokes Law; indefinite sentence; constitutional challenges.*

Trial court did not abuse its discretion in denying defendant's motion for a mistrial after one of the state's witnesses heard, and was influenced by, the testimony of another of the state's witnesses. Defendant did not show that the witness' testimony improperly influenced the jury, affected the outcome of the case or deprived him of a fair trial.

Defendant was not denied the effective assistance of counsel. Even if defense counsel were deficient for failing to request a separation-of-witnesses order at the outset of the trial, defendant did not show that there is a reasonable probability that the outcome of the trial would have been different had counsel requested a separation-of-witnesses order.

Defendant's convictions for aggravated robbery, robbery, grand theft and theft were supported by sufficient evidence and were not against the manifest weight of the evidence. The cumulative error doctrine did not apply where defendant did not show that multiple errors occurred below.

Defendant's arguments that the indefinite sentencing provisions of the Reagan Tokes Law are unconstitutional were overruled pursuant to the en banc decision in State v. Delvallie, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

111986 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHNNY EVANS

Affirmed.

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

KEY WORDS: *Felonious assault; insufficiency of the evidence; R.C. 2903.11; Reagan Tokes Law; S.B. 201.*

The trial evidence was sufficient to support a conviction of felonious assault. The trial court's imposition of an indefinite sentence pursuant to the Reagan Tokes Law was not a violation of defendant-appellant's constitutional rights.

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111998 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v FREDDIE TACKETT, JR.

Vacated and remanded.

Michael John Ryan, J., and Kathleen Ann Keough, P.J., concur; Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: *Crim.R. 11(C); guilty plea; Reagan Tokes Law; maximum sentence; App.R. 12.*

The appellant's plea of guilty to two counts of felonious assault with firearm specifications was not knowingly, intelligently, and voluntarily made because the trial court did not inform the appellant that he was subject to an indefinite sentence pursuant to the Reagan Tokes Law when it told the appellant he was facing "two to eight years in annual increments plus one-half of the longest imposed sentence for a potential total of up to 12 years in prison," but also "worst case scenario" he could receive a definite sentence of 16 years in prison during the plea colloquy.

Under the facts of this case, the trial court's failure to inform the appellant that he was subject to an indefinite sentence was a complete failure of Crim.R. 11(C)(2)(a), which relieved the appellant from having to show prejudice. But even if the appellant had to show prejudice, that burden was met because the sentence was two and one-half years longer than the court told the appellant he could receive if he accepted the state's plea.

112032 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ANTHONY MENCINI, ET AL. v
GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY, ET AL.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Summary judgment; RTA; political subdivision; employee immunity.*

Having reviewed the record, we are unable to conclude that there are no genuine issues of material fact and reasonable minds cannot but conclude that appellee driver was solely at fault for the collision of his vehicle with an RTA bus and that the bus driver did not act negligently in his operation of the bus. The bus driver's fault or lack of fault in the collision is a highly fact-specific inquiry given the circumstances of this case. Accordingly, the trial court appropriately denied RTA's motion for summary judgment grounded on political subdivision immunity.

The facts as alleged in the complaint reflects a claim of negligent

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conduct by the bus driver, but not willful, wanton, or reckless conduct. Accordingly, the trial court erred in denying the bus driver's motion for summary judgment.

112075 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL LOMBARDO, ADMINISTRATOR, ET AL. v
BEST WESTERN HOTELS & RESORTS, ET AL.

Affirmed.

Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur; Frank Daniel Celebrezze, III., P.J., dissents (with separate opinion).

KEY WORDS: Negligence; wrongful death; motion to dismiss; Civ.R. 12(B)(6); existence of duty; special relationship; reasonable care; innkeeper; hotel; guest; duty to rescue; duty to protect; wellness check; confirmation that an individual is a guest; overdose.

An emancipated adult guest passed away at a hotel from a suspected opioid overdose. Approximately two days before the guest died, his father and sobriety sponsor called the hotel to express concern that the guest suffered from addiction and had missed a scheduled appointment. They requested that the hotel conduct a "wellness check" on the guest. The hotel declined to conduct a wellness check and, further, led the callers to believe that the individual was not a guest at the hotel. The guest's estate and parents filed a complaint alleging negligence and wrongful death.

We affirmed the dismissal of that complaint for failure to state a claim. Under the facts as alleged in the complaint, the hotel was under no affirmative duty to conduct a wellness check on an emancipated adult guest solely because the guest's father and sobriety sponsor were concerned that the guest suffered from addiction and had missed an appointment. Further, the hotel was under no affirmative duty to truthfully confirm to the father or sponsor that the individual was a guest at the hotel.

112083 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MONTY G. NATH

Affirmed and remanded.

Anita Laster Mays, A.J., Kathleen Ann Keough, J., and Lisa B. Forbes, J., concur.

KEY WORDS: Crim.R. 11; plea colloquy; sentencing; nunc pro tunc.

Defendant's claim that the trial court's failure to have defendant separately state "guilty" to each count of a two-count plea

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(Case 112083 continued)

agreement constitutes reversible error lacks merit. Sentence packaging and collective sentencing are not implicated. The plea agreement was stated on the record, the trial court fully addressed each count and referred to the “pleas” and the “agreement.” Defendant concedes that the plea colloquy was sufficient; thus, defendant’s pleas were knowingly, intelligently, and voluntarily made.

Nunc pro tunc entries are required to correct the plea and sentencing entries to reflect the deletion of a specification as was properly stated on the record and to reflect that fines were waived and costs of \$250 on each count was imposed.

112097 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v EVELYN GIPSON

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: R.C. 2913.31(A)(2); forgery; passing bad checks; R.C. 2913.11(B); R.C. 2929.14(C); consecutive sentences; de novo review; clear and convincing evidence.

The evidence supported the imposition of consecutive sentences, and the sentences were not contrary to law. The record supported the length of each sentence as well as the total sentence. Appellant had 36 prior convictions, most of them theft-related.

112152 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
S.W. v S.L.R.B.

Affirmed.

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

KEY WORDS: R.C. 2903.214; civil stalking protection order; Civ.R. 65.1; objection; failure to file.

Appellant filed appeal of a civil stalking protection order. Under Civ.R. 65.1(G), appellant had to timely file written objections to the trial court’s adoption of the magistrate’s granting of a civil stalking protection order prior to filing his appeal. Appellant failed to file any objections. Without timely filed objections, appellant may not challenge the trial court’s judgment on appeal.

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112153 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RIZQ WALKER

Reversed and remanded.

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

KEY WORDS: *Speedy-trial; R.C. 2945.71; arrest; held pending the filing of charges; APA hold.*

Trial court erred in granting defendant's motion to dismiss the indictment on speedy-trial grounds under R.C. 2945.71(C) because although defendant was held after his arrest, he was not held pending the filing of charges but rather on an APA hold related to violation of his parole. Thus, the defendant's arrest did not trigger the speedy-trial clock. Instead, the clock began to run when the defendant was formally charged and because only 181 of the 270 days allowed under R.C. 2945.719(C) to bring a defendant to trial had elapsed as of the date the defendant filed his motion to dismiss, dismissal on statutory speedy-trial grounds was error.

112212 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: E.G., ET AL.

Dismissed.

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

KEY WORDS: *Anders brief; withdrawal of counsel; no meritorious issues; appellate court independent review; termination of parental rights; permanent custody; agency; R.C. 2151.414; abuse of discretion; clear and convincing evidence; best interest of the children; manifest weight of the evidence; statutory factors; failure to engage with objectives of case plan; failure to remedy conditions causing children's removal.*

Following a thorough, independent examination of the record as required by Anders, we find that the juvenile court's termination of parental rights and award of permanent custody to the Agency was supported by clear and convincing evidence. The children could not be placed with appellant, who failed to engage with the objectives of her case plan and thus failed to remedy the conditions that caused the children's removal.

The juvenile court did not abuse its discretion in determining that an award of permanent custody was in the children's best interest and did not err when it awarded permanent custody to the Agency.

We agree that there is no merit to the appeal and that this appeal is wholly frivolous. We grant counsel's motion to withdraw and dismiss this appeal.

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112227 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
AHARON YECHIEL ROSSKAMM v T-MOBILE USA, INC.

Affirmed.

Kathleen Ann Keough, J., Anita Laster Mays, A.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Motion to stay pending arbitration; arbitration agreement; billing dispute; any and all disputes; termination of agreement.*

*Trial court's judgment granting appellee's motion to stay litigation pending arbitration affirmed where appellant's claim was related to a billing dispute with appellee and the arbitration agreement provided that "any and all claims or disputes * * * including billing disputes" will be arbitrated. The alleged termination of the agreement before appellee's alleged tortious conduct did not affect appellant's obligation to arbitrate his claim because it was related to a billing dispute and thus subject to arbitration, regardless of when the alleged tortious conduct occurred.*

112235 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KAREEM WALTON

Affirmed.

Michael John Ryan, J., Kathleen Ann Keough, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion to withdraw plea; direct appeal; lack of jurisdiction.*

Crim.R. 32.1 does not vest jurisdiction in the trial court to maintain and determine a motion to withdraw the guilty plea subsequent to an appeal and an affirmance by the appellate court. Because this court affirmed the defendant's conviction in his direct appeal, the trial court did not have jurisdiction to consider the defendant's motion to withdraw his plea.

112349 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
AARON FINGER v LIBERTY MUTUAL PERSONAL INSURANCE CO., ET AL.

Affirmed.

Kathleen Ann Keough, P.J., Emanuella D. Groves, J., and Michael John Ryan, J., concur.

KEY WORDS: *Summary judgment; insurance policy; breach of contract; promissory estoppel; bad faith; fraud; new argument on*

(Case 112349 continued)

appeal; intentional infliction of emotional distress.

Trial court did not err in granting summary judgment to defendant-insurer on plaintiff's claims for breach of contract, promissory estoppel, bad faith, fraud, and intentional infliction of emotional distress because the insured did not live on the insured property and the insurance policy covered only the premises where the insured lived; plaintiff could not reasonably rely on the insurance application as a guarantee of coverage; plaintiff failed to argue or present any evidence that insurer did not have a reasonable justification for denying his claim; plaintiff did not argue or present any evidence in opposition to the insurer's motion for summary judgment on plaintiff's fraud claim and could not raise new arguments on appeal; and plaintiff did not present any expert testimony as to the emotional distress suffered and did not seek any treatment for his alleged emotional distress.