

July 13, 2023

111935 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CARLOS LILLO

Reversed and remanded.

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

KEY WORDS: *R.C. 2907.05(A)(4); Evid.R. 403(B); abuse of discretion; Crim.R. 52(B); plain error; Evid.R. 701; testimony on credibility of witness.*

At trial for violations of R.C. 2907.05(A)(4), defendant raised issues of victim's credibility. The trial court allowed improper character evidence pursuant to Evid.R. 403(B) regarding defendant's other acts to be admitted at trial and in so doing abused its discretion. The trial court allowed improper opinion testimony pursuant to Evid.R. 701 where the victim's mother vouched for the victim's account, which was an abuse of discretion. The improper evidence bolstered the victim's testimony and in consideration of the evidence at issue at trial, this court cannot say that the outcome of the trial would be the same absent the improper character and opinion testimony. Judgment of the trial court reversed and remanded for new trial.

111947 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES JACKSON

Affirmed.

Mary J. Boyle, J., Frank Daniel Celebrezze III, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Conflict of interest, possible conflict, actual conflict, evidence outside the record, harmless error, Crim.R. 52(A), plain error, Crim.R. 52(B), sufficiency, direct evidence, circumstantial evidence, manifest weight, speedy trial, R.C. 2945.71, R.C. 2945.72, tolling, Reagan Tokes Law, cumulative-error doctrine. Judgment is affirmed.*

We find that (1) no possible or actual conflict of interest exists where defense counsel wrote a character reference letter on behalf of the trial court judge for use in a separate and unrelated proceeding; (2) the trial court's reference to facts not in evidence when announcing its verdict constitutes harmless error; (3) the admission of an anonymous note did not amount to plain error; (4) defendant's conviction for felonious assault was supported by sufficient evidence based on the circumstantial evidence presented at trial; (5) defendant's convictions are supported by the manifest weight of the evidence; (6) defendant's right to a speedy trial was not violated; (7) the Reagan Tokes Law does not violate the separation-of-powers doctrine or defendant's right to due process; and (8) the cumulative-error doctrine is inapplicable.

CASE DECISION LIST

111962 SOUTH EUCLID MUNI. C Criminal Muni. & City
CITY OF SOUTH EUCLID v EDGAR HARDIN

Affirmed.

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

KEY WORDS: *Pro se litigants; manifest weight of the evidence; admissibility of evidence; failure to follow appellate rules; App.R. 12; App.R. 16.*

Pro se defendant's convictions for traffic violation affirmed. The trial testimony and exhibits showed that the defendant did not exercise due care when changing lanes and did not immediately stop at the scene of the accident. The photographs of the vehicles involved in the accident were properly admitted at trial. Portions of the pro se defendant's appellate brief did not comply with the appellate rules.

112050 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHARON WILLIAMS

Reversed and remanded.

Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, J., concurs (with separate concurring opinion).

KEY WORDS: *Dismissal of indictment; question of law; de novo review; Crim.R. 48; deprivation of defendant's constitutional or statutory rights; collateral estoppel; issue cannot again be litigated between same parties in future suit; res judicata; complicity; R.C. 2923.03.*

The trial court erred in dismissing the indictment against appellee based upon the determination in the other offender's juvenile case. Appellee was not a party to the prior action between the state and the juvenile. Thus, neither collateral estoppel nor res judicata barred the state from litigating the same issues in an action against appellee.

112051 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAHMONTAY HARDER

Affirmed and remanded.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

CASE DECISION LIST

(Case 112051 continued)

KEY WORDS: Aggravated murder; joinder; severance; Crim.R. 8; Crim.R. 14; ineffective assistance of counsel; sufficiency of the evidence; weight of the evidence.

The defendant's convictions for aggravated murder and robbery are affirmed for three reasons: the defendant failed to preserve any argument against joinder of two indictments for the purpose of trial, but that failure did not amount to ineffective assistance of counsel because the defendant is unable to demonstrate any prejudice from such an error; further, trial counsel's failure to seek a mistrial following the trial court's inadvertent reading of a weapons count, being tried to the bench, did not constitute ineffective assistance of counsel because the trial court rectified the mistake and nothing demonstrates that the fleeting mention of a potential count prejudiced the defendant; and finally, the convictions are not based on insufficient, or are against the weight of, the evidence.

112054 PARMA MUNI. G Civil Muni. & City
ANGELA SWANSON v JESSICA GALAYDA, ET AL.

Affirmed.

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

KEY WORDS: *App.R. 12; App.R 16; failure to cite legal authority; failure to cite to transcript; pro se; summarily overrule.*

Appellant's assignment of error is summarily overruled because the brief fails to conform to App.R. 12 and 16. Judgment affirmed.

112072 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GREG DAVIS

Affirmed.

Sean C. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Felonious assault; aggravated menacing; having weapons while under disability; shooting; merger; allied offenses of similar import; misdemeanor; jail; sentence; voluntarily served; collateral legal disability; moot; sufficiency; manifest weight; indefinite sentencing; second-degree felony; Reagan Tokes Law; S.B. 201; constitutional.*

Trial court's judgment was affirmed. Plain-error challenge for failing to merge counts of felonious assault and misdemeanor aggravated menacing as allied offenses of similar import was moot because appellant voluntarily satisfied the misdemeanor jail sentence and no collateral legal disability was identified.

CASE DECISION LIST

(Case 112072 continued)

Appellant's challenged convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Rejected appellant's arguments challenging the constitutionality of the Reagan Tokes Law.

112129 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALTON HOLLOWAY

Affirmed.

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

KEY WORDS: Aggravated murder; aggravated robbery; sufficiency of the evidence; manifest weight; DNA; Reagan Tokes Law.

Defendant's convictions upheld where evidence demonstrated that defendant shot and killed the victim after his accomplice rummaged through the victim's pockets and car. DNA evidence linked defendant to the murder weapon.

112136 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: C. K-O.

Affirmed.

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

KEY WORDS: Child support; motion to modify; abuse of discretion; change in circumstances; Castle child.

Where appellant fails to file a transcript of lower court proceedings, we presume regularity. The trial court did not abuse its discretion in denying appellant's motion to modify child support where the appellant did not meet his burden of showing a change in circumstances warranting modification.

112149 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RASHAUNE RAMSEY

112150 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RASHAUNE RAMSEY

Affirmed.

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

CASE DECISION LIST

KEY WORDS: *Sexually oriented offender; Megan's Law; Adam Walsh Act; registration; res judicata; prison; release; moot; journal entry.*

The trial court did not abuse its discretion by denying the defendant's postconviction motions because his claims pursuant to Crim.R.32(C) are barred by res judicata and his request for a hearing to determine his sexual-offender-classification status is moot.

112228 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TIMOTHY KING

Dismissed.

Anita Laster Mays, A.J., and Michael John Ryan, J., concur; Lisa B. Forbes, J., dissents (with separate opinion).

KEY WORDS: *App.R. 3; App.R. 16; Loc.App.R. 3(B)(1).*

The appeal is hereby dismissed for failure to comply with App.R. 3, App.R. 16, and Loc.App.R. 3(B)(1), file a notice of appeal in one of the two cases purportedly appealed resulting in a lack of jurisdiction over that case, and in the interest of justice.

112372 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
M.C. v H.M., ET AL.

Reversed and remanded.

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

KEY WORDS: *R.C. 2903.214; civil stalking protection order; hearing requirement.*

The trial court erred by dismissing a petition for a protection order before conducting the full hearing as required under R.C. 2903.214.

112407 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: I.B.

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Sean C. Gallagher, J., concur.

CASE DECISION LIST

(Case 112407 continued)

KEY WORDS: Permanent custody; best interest; R.C. 2151.414(B)(1); R.C. 2151.414(D).

The juvenile court's decision granting permanent custody of appellant's minor child to the Cuyahoga County Division of Children and Family Services was affirmed where the record contained competent, credible evidence supporting the juvenile court's determination that two R.C. 2151.414(B)(1) factors applied and permanent custody under R.C. 2151.414(D) was in the best interest of the minor child.

112418 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MICHAEL MELLON v AARON A. O'BRIEN AND MANSOUR GAVIN, LPA

Affirmed.

Frank Daniel Celebrezze, III, P.J., and Emanuella D. Groves, J., concur; Sean C. Gallagher, J., concurs (with separate concurring opinion).

KEY WORDS: Legal malpractice; Civ.R. 12(C); insufficiency of service of process; summary judgment; vicarious liability.

Judgment affirmed. The trial court correctly determined that defendant O'Brien, an attorney, did not waive the defense of insufficiency of service of process. Since plaintiff Mellon did not serve O'Brien, O'Brien was properly dismissed from the case. O'Brien's employer, defendant Mansour Gavin L.P.A., was therefore entitled to summary judgment on all remaining claims premised on Mansour Gavin L.P.A.'s vicarious liability for O'Brien's alleged legal malpractice.

112423 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: A.A.

Affirmed.

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

KEY WORDS: Parental rights; fundamental liberty interest; care; custody; essential and basic civil right; family law equivalent of the death penalty; last resort; necessary for child's welfare; right to parenting; R.C. 2151.414; two-part test; clear and convincing evidence; permanent custody to public services agency; inability to place child with parents; temporary custody; failed to remedy conditions; substance abuse; domestic violence; inadequate parenting skills; mental health treatment; best interest of the child; two-prong test; interaction and interrelationship; wishes of the child; custodial history; need for legally secure permanent placement; permanent custody; interaction and interrelationship;

(Case 112423 continued)

custodial history; need for legally secure permanent placement; court conclusion.

Mother appeals the trial court order granting permanent custody of the child to CCDCFS. While a parent has a “fundamental liberty interest” in the care and management of their child, this right is not absolute and is subject to the ultimate welfare of the child. It suggests that termination of parental rights is an extreme measure, likened to the “death penalty” in criminal law, and is only sanctioned when necessary for the child’s welfare. The court applies the two-part test set out in R.C. 2151.414 to determine whether permanent custody should be awarded to a public services agency. The first prong was met because the child has been in the temporary custody of the Cuyahoga County Division of Children and Family Services for 12 or more months of a consecutive 22-month period. Factors such as substance abuse, failure to develop necessary parenting skills, neglect of mental health treatment, and an absence of suitable family placements supported this decision. The second prong requires the court to find that granting permanent custody to the agency is in the best interest of the child. Considerations included the child’s interaction with various individuals, her wishes, custodial history, behavioral health needs, and the need for legally secure permanent placement. Given the evidence, the court ruled that granting permanent custody to the agency was in the best interest of the child and the child could not be placed with either parent within a reasonable time.