

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 8, 2023

111620 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KENNETH WILLIAMS

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Felonious assault; aggravated assault; inferior offense; serious provocation; self-defense; manifest weight of the evidence; bench trial.*

Appellant's conviction was not against the manifest weight of the evidence where the evidence showed that he knowingly caused serious physical harm to the victim during an ongoing argument in which both men were intoxicated, and the evidence does not support any of the elements of self-defense.

111626 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHESTER - 12, LTD. v EPIQ CONSTRUCTION SERVICES, INC., ET AL.

112198 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHESTER/12, LTD. v EPIC CONSTRUCTION SERVICES, INC.

Affirmed.

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

KEY WORDS: *Summary judgment; motion to vacate; expert opinion; affidavit.*

Trial court did not err in granting appellee's motion for summary judgment where appellee met its burden under Civ.R. 56(C) of demonstrating there were no genuine issues of material fact regarding appellant's claims and appellant did not meet its reciprocal burden of showing there were disputed issues for trial; neither the trial court nor this court in reviewing the trial court's summary judgment ruling could consider an affidavit submitted to the trial court after the ruling; appellant forfeited for appeal any argument that the trial court applied an incorrect standard in requiring appellant to support its supplement to its Civ.R. 60(B) motion with evidence of the type allowed by Civ.R. 56(C) because appellant did not raise the issue in the trial court; trial court properly denied appellant's motion to vacate the summary judgment ruling in favor of appellee where expert testimony was necessary for appellant to prevail on its claims but appellant neither offered any expert testimony with its motion to vacate nor alleged that an expert had opined that appellee's work did not meet the contract requirements or was below the expected standard.

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111856 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JAUSTIN BROWNING

111857 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ANTHONY METZ

111858 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v RICHARD TENNEY

111859 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ANTHONY BERGANT

Affirmed.

Lisa B. Forbes, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Postconviction relief; judicial bias; presumption against judicial bias; extrajudicial source doctrine; abuse of discretion.*

The trial court did not abuse its discretion by granting the defendants' postconviction-relief petition. Evidence presented at the hearing showed that the trial judge's extrajudicial conversation with his wife about whether he would convict or acquit the defendants affected or appeared to affect the outcome of trial and the defendants' prison sentences.

111867 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v REGINALD E. BARNES, SR.

Reversed, vacated, and remanded.

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

KEY WORDS: *Pro se litigants; speedy-trial rights; R.C. 2945.71; R.C. 2945.72.*

Defendant's convictions for misdemeanor assault and criminal damaging, and his associated sentence, are vacated, because he was not brought to trial within the statutory time frame found in R.C. 2945.71(B)(2). The municipal court improperly charged continuances to the defendant, which, in turn, improperly tolled his speedy-trial time.

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111891 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DENZELLE ROBY

Affirmed.

Anita Laster Mays, A.J., Michelle J. Sheehan, J., and Mary J. Boyle, J., concur.

KEY WORDS: *Maximum sentences; R.C. 2929.11; R.C. 2929.12.*

The trial court did not err in sentencing the appellant to a maximum sentence, because the record reflects that the sentence was not contrary to law, because the sentence is within the statutory range for the offense, and the court considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12.

111912 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ELLIS JAMES WILSON

Affirmed.

Frank Daniel Celebrezze, III, P.J., Eileen A. Gallagher, J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Consecutive sentences; findings; R.C. 2929.14(C)(4); R.C. 2953.08(G)(2); clearly and convincingly supported by the record; proportionality; seriousness of offender's conduct; danger posed to the public.*

The record clearly and convincingly supports the trial court's finding that consecutive sentences were not disproportionate to the seriousness of appellant's conduct and the danger he poses to the public.

111913 BEREA MUNI. A Criminal C.P.
CITY OF STRONGSVILLE v RICHARD T. HENRY

Vacated and remanded.

Eileen A. Gallagher, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Attempted petty theft; Crim.R. 19(D); magistrate's decision; Crim.R. 19(D)(3)(a)(iii); required notice regarding filing objections.*

Where magistrate's decision failed to comply with Crim.R. 19(D)(3)(a)(iii) and appellant failed to file timely objections to magistrate's decision, appellant's conviction vacated and case

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remanded to the trial court so that the magistrate could prepare and file a decision that complies with Crim.R. 19(D)(3)(a)(iii) and the parties may then have the opportunity to file objections to magistrate's decision.

111940 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAI'SHAWN HARRIS

Affirmed.

Kathleen Ann Keough, J., Frank Daniel Celebrezze, III, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: Road rage; shooting; inconsistent verdicts; compromise; deadlocked; identification; surveillance video; Reagan Tokes Law.

Defendant's felonious assault conviction affirmed where evidence demonstrates that he was the masked gunman who shot at a vehicle, striking the passenger, following a road-rage incident. Verdicts' inconsistency was not attributed to jury confusion or doubt as to adequacy of the evidence, but possibly based on compromise or leniency because the jury was deadlocked on two occasions. Counsel was not ineffective for failing to pursue a suppression of a witness's pretrial identification because surveillance video was obtained also identifying the defendant.

111983 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
JPMORGAN CHASE BANK v NANCY L. LOSEKE, ET AL.

Reversed and remanded.

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

KEY WORDS: Foreclosure; R.C. 5301.233; R.C. 2329.44; distribution of post-sale excess funds; Civ.R. 60(B).

The mortgagee bank failed to timely submit a motion for reimbursement of advances pursuant to the decree of foreclosure. It then failed to appeal the trial court's order confirming the sale. The Civ.R. 60(B) motion for relief from judgment ultimately filed by the bank was an improper substitute for a timely appeal under the circumstances of this case. The trial court abused its discretion in granting relief from judgment under Civ.R. 60(B) and erred in denying the mortgagor's motion for distribution of excess funds pursuant to R.C. 2329.44.

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111993 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
FAITH TOWNSEND v AUTONATION WICKLIFF, ET AL.

Affirmed.

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

KEY WORDS: *Breach of warranty; summary judgment.*

Plaintiff brought claim against car dealer and manufacturer alleging a defect in a vehicle purchased from the dealer. Plaintiff did not supply evidence that a warranty existed by attaching evidence of the warranty to the complaint or by attaching evidence of the warranty to a response to defendants' motion for summary judgment. The complaint further alleged that plaintiff took the vehicle to defendants only once to repair the claimed defect. Plaintiff only appealed the grant of summary judgment in favor of the manufacturer. Because plaintiff did not provide evidence that a warranty existed and did not provide evidence that manufacturer was provided a reasonable opportunity to remedy the claimed defect, the trial court properly granted summary judgment.

112006 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC MUNOZ

Affirmed.

Sean C. Gallagher, J., and Eileen T. Gallagher, J., concur; Kathleen Ann Keough, P.J., concurs in judgment only.

KEY WORDS: *Gross sexual imposition; R.C. 2907.05; child endangering; R.C. 2919.22; weight of the evidence; impeachment; hearsay; Evid.R. 613; ineffective assistance; sentencing review; R.C. 2929.11; R.C. 2929.12; judicial bias.*

Defendant's convictions for sexual assault of a child under the age of 13 and child endangerment are affirmed because the defendant has not demonstrated (1) that the convictions are against the weight of the evidence, (2) that Evid.R. 613, which precluded him from introducing inconsistent statements without giving the victim the opportunity to explain any inconsistency, was inapplicable; (3) that he was prejudiced by his counsel's alleged deficient performance at trial; or (4) that his claims of judicial bias were inextricably entwined with due process concerns for the purposes of determining whether he received a fair trial.

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112007 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ERIC MUNOZ

Affirmed.

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

KEY WORDS: *Probation violation; ineffective assistance of counsel; App.R. 16(A)(7).*

Trial counsel was not ineffective for stipulating that appellant had violated the terms of his community-control sanctions after he was found guilty of gross sexual imposition and child endangering in a separate case; appellate court did not consider appellant's assignment of error that the trial court erred in finding he had violated the terms of his community-control sanctions where appellant did not cite to any record evidence or make any legal argument supporting his claimed error, as required by App.R. 16(A)(7).

112015 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WORLDWIDE MOTOR SALES LTD. v DONALD YOUNG, ET AL.

Reversed and remanded.

Lisa B. Forbes, J., Frank Daniel Celebrezze, III, P.J., and Kathleen Ann Keough, J., concur.

KEY WORDS: *Breach of contract; summary judgment.*

The trial court erred by granting summary judgment to the defendant and denying plaintiff's motion for summary judgment. The summary-judgment evidence showed that the defendant breached the unambiguous terms of the contract at issue.

112033 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JOHN E. MORAWSKI, ADMINISTRATOR, ET AL. v MICHAEL B. DAVIS, ET AL.

Affirmed.

Emanuella D. Groves, J., and Anita Laster Mays, A.J., concur; Lisa B. Forbes, J., dissents (with separate opinion).

KEY WORDS: *Production of documents; wrongful death; negligence; medical records; physician-patient privilege; waiver; exception; relevance; discovery; in camera review; mental health; criminal trial; civil action; subpoena; interrogatories; motion to compel; abuse of discretion; de novo review; Civ.R. 26(B); Civ.R.*

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45; R.C. 2317.02; causally or historically related; exceptions; confidentiality; trust; psychotherapist-patient privilege; medical treatment; diagnosis; treatment; physical or mental condition; privilege log; and protective order.

Trial court decision granting motion to compel discovery and motion to enforce subpoenas affirmed. Party claiming physician-patient privilege has the burden of providing sufficient information for a reviewing court to review disputed records, de novo.

112168 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DEAUNTE BULLITT

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: Crim.R. 33(B); motion for leave to file motion for new trial; newly discovered evidence; Brady violation.

Defendant was tried with a codefendant and found guilty of several drug-related offenses. At trial, police officers testified they arrived at the codefendant's apartment to execute an arrest warrant for him and that no one came to the door. Within minutes of the officers' arrival, defendant was seen throwing over 100 grams of crack cocaine and \$22,000 in cash off the balcony. A search of the apartment uncovered heroin and drug paraphernalia.

Defendant filed a motion for leave to file a delayed motion for new trial based upon newly discovered evidence - a police report from a month prior to his arrest of a citizen complaining of drug activity at the codefendant's apartment. The police report of the complaint was not disclosed prior to trial, and defendant argued the nondisclosure was a Brady violation.

A defendant establishes a Brady violation by showing that favorable but suppressed evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. The report of the codefendant's prior drug activity might be considered favorable to defendant because it implicates the codefendant in ongoing drug activity without mentioning defendant. In contrast, the report is not exculpatory to the charges brought against defendant at trial because the report did not address the facts and circumstances of his charges. Further, the report did not directly contradict police officers' testimony.

That the police received a complaint of drug activity by the codefendant in the past does not contradict or impeach trial testimony, does not give rise to the conclusion that the police officers had a motive to fabricate evidence, and does not undermine confidence in the verdict rendered at trial. As such, the trial court did not abuse its discretion by denying defendant leave to file a motion for new trial based on newly discovered evidence.

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112327 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: S.F., ET AL.

Affirmed.

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

KEY WORDS: *Termination of parental rights; continuance; violation of due process rights; plain error; hearsay evidence; Evid.R. 801(C).*

Judgment affirmed. *The trial court did not err in allowing the permanent custody trial to go forward and overruling Mother's continuance when Mother refused the provided transportation to bring her to the trial from jail. The trial court also did not err in receiving improper hearsay testimony because all of the alleged hearsay statements were independently supported by evidence in the record.*