

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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June 15, 2023

111548 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSHUA TOWNSEND

Affirmed.

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

KEY WORDS: *Restitution; stipulation; ability to pay; ineffective assistance of counsel.*

Trial court did not commit plain error when ordering restitution where the defendant stipulated to the amount of restitution. The stipulation waived any error based on the trial court deciding the issue without a hearing.

Trial counsel did not provide ineffective assistance of counsel by failing to object to an order of restitution where the record reflects that the trial court asked counsel if his client would be willing to stipulate and, after a consultation off the record, counsel agreed on behalf of the client to stipulate to restitution.

111784 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
A.H. v T.H.

Affirmed.

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

KEY WORDS: *Domestic violence civil protection order; R.C. 3113.31; frivolous conduct; R.C. 2323.51; abuse of discretion; plain error; attorney fees.*

The trial court did not err in awarding attorney fees against a petitioner in a domestic violence civil protection order proceeding where it found the petitioner had engaged in frivolous conduct pursuant to R.C. 2323.51. The trial court did not err in finding that petitioner-appellant had engaged in frivolous conduct pursuant to R.C. 2323.51. Specifically, the trial court did not err in considering the petitioner-appellant's attempt to voluntarily dismiss her action minutes before a full hearing on her petition and did not improperly rely on evidence outside of the record. The trial court's award of attorney fees did not constitute plain error.

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111874 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TEVIN RATLIFF

Affirmed.

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

KEY WORDS: *Self-defense; jury instruction; lesser-included offense.*

Trial court properly refused to provide a self-defense instruction where the instruction was not warranted based on the evidence.

Trial court properly refused to provide a lesser-included offense instruction on involuntary manslaughter where the requested instruction was not warranted based on the evidence.

111892 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY HUNT

Affirmed.

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

KEY WORDS: *Self-defense; transferred intent; prosecutorial misconduct; closing argument; objective; reasonable belief; inconsistent verdicts; felonious assault; reckless assault; lesser-included offense instruction; manifest weight of the evidence; sufficient evidence.*

The trial court did not commit prejudicial error in instructing the jury on transferred intent where the evidence showed that the defendant was only trying to shoot a single target and the transferred-intent instruction was inapplicable.

Trial court's charge on self-defense, which included an element requiring proof that the defendant acted reasonably, was an accurate statement of the law.

Trial court properly refused request for a lesser-included-offense instruction on reckless assault where the evidence did not support a finding of reckless assault.

Inconsistent verdicts did not deprive the defendant of due process of law.

Prosecutor's argument that the defendant was required to act reasonably when acting in self-defense was not prosecutorial misconduct because the prosecutor's statements were consistent with the law on self-defense.

Because the defendant bears the burden of producing evidence to

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(Case 111892 continued)

support a claim of self-defense, a self-defense claim is not subject to a sufficiency-of-the-evidence claim.

Defendant's felonious-assault convictions were not against the manifest weight of the evidence.

111920 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DWAYNE SHIELDS, JR.

Affirmed.

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

KEY WORDS: Guilty plea; Crim.R. 11(C); Dangler; prejudice; bad time; R.C. 2943.032; postrelease control; maximum sentence; R.C. 2929.19; prison sentence; community-control sanctions.

The defendant did not demonstrate that his guilty plea was taken in violation of Crim.R. 11 when he argued the trial court referenced postrelease control, but did not fully advise him about it while taking his guilty plea. On appeal, the defendant did not argue prejudice, which is required pursuant to State v. Dangler. Accordingly, defendant's first assignment of error is overruled.

In his second assignment of error, the defendant alleges that the trial court failed to notify him at sentencing of an inapplicable statute. The exact subsection quoted by the defendant was outdated and the modern equivalent references sex offender notifications, of which the defendant was not subject to. The subsection similar that quoted by the defendant was also inapplicable because it discusses the court's duties when imposing a prison term. Here, the defendant was sentenced to community-control sanctions. Therefore, the second assignment of error is overruled.

111928 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CRAIG HARTMAN, ET AL. v JANIS KERCH

Affirmed in part, reversed in part, and remanded.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: Motion for summary judgment; prey; defamation; false statement; substantial truth; fact; opinion; totality of the circumstances; defamation per se; innocent construction; publication; rebuttable presumption; damages; actual malice; qualified privilege.

Judgment granting defendant-appellee's motion for summary

(Case 111928 continued)

judgment is reversed and judgment denying the plaintiffs-appellants' motion for partial summary judgment as to the issue of liability is affirmed. Genuine issues of material fact remain as to three of the five elements of defamation and neither party is entitled to summary judgment as a matter of law. While the statement "[t]hey prey on older single women" was a statement of fact, defamatory per se, and published as a matter of law, reasonable minds could differ as to (1) whether the statement was false or substantially true; (2) whether the plaintiffs-appellants suffered injury as a result of the statement's publication; and (3) whether the statement was protected by qualified privilege and the defendant-appellee acted with the requisite degree of fault. Accordingly, the case is remanded to the trial court for further proceedings.

111959	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
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C.M.R. v B.T.B.S.

Reversed and remanded.

Eileen A. Gallagher, P.J., Emanuella D. Groves, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Domestic violence civil protection order; request for continuance to obtain counsel; R.C. 3113.31(D)(2); abuse of discretion.*

Trial court abused its discretion in denying respondent's request for a continuance of full hearing on petition for a domestic violence civil protection order so he could obtain counsel where trial court considered none of the factors in State v. Unger, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981), or any the particular facts and circumstances surrounding the request for continuance and denied the request for a continuance based solely on the fact that petitioner objected to a continuance.

112026	COMMON PLEAS COURT	A	Criminal C.P.
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STATE OF OHIO v ROBERT HINDMAN

Vacated.

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

KEY WORDS: *Plea; sex-offender classification; maximum penalty; prejudice requirement.*

A classification as a sex offender is a penalty for the purposes of Crim.R. 11. The trial court's failure to give the defendant any advisement whatsoever that his guilty plea to sexual battery would result in him being classified as a sex offender constitutes a

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(Case 112026 continued)

complete failure to advise the defendant of the maximum penalty. Because the trial court completely failed to comply with a portion of Crim.R. 11(C), the defendant was relieved of his burden of showing prejudice. The defendant's plea therefore must be vacated.

112074 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VICTOR MALLORY, JR.

Affirmed.

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

KEY WORDS: Rape; importuning; sufficiency of the evidence; manifest weight of the evidence.

The appellant's convictions for rape and importuning were supported by sufficient evidence and were not against the manifest weight of the evidence. Although the appellant challenged the 12-year-old victim's identification of him based on her initial description of the offender as having a cross tattoo under his eye and then testifying in court that appellant did not have a cross tattoo under his eye, this did not render the verdict unsupported by the evidence. The appellant had numerous tattoos covering his neck, arms, torso, chest, hands, and fingers, and the victim and the victim's mother identified the appellant in court.

In addition, appellant's parole officer identified the appellant's picture on his Instagram account and the police connected appellant to his Instagram account through his name, which was on the account, his email, and his phone number. The appellant also admitted to his parole officer that the victim told him she was older.

112099 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
TREASURER OF CUYAHOGA COUNTY, OHIO v
UNKNOWN HEIRS OF WILLIAM W. RUSSELL, JR., ET AL.

Affirmed.

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

KEY WORDS: Trial court; excess proceeds; distribute; foreclosure; mortgage; extinguished; confirmation; note; foreclosure sale; lien; equitable; abuse of discretion; judgment.

The trial court did not abuse its discretion in denying the bank's motion to distribute excess funds from a foreclosure sale because the bank's mortgage interest had been extinguished, the bank possessed an additional avenue of relief under the note, and the bank did not present arguments suggesting it was entitled to an equitable lien.