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Court of Appeals, Eighth Appellate District

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May 18, 2023

111494 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v RAVEN WELLS

Vacated and remanded.

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

KEY WORDS: *Conviction; appeal; aggravated disorderly conduct; first-degree misdemeanor; pretrials; trial date; substitute counsel; ineffective assistance of counsel; Strickland test; plea; knowing; intelligent; voluntary; prejudice; trial court; continuance; denied; retained counsel; guilty plea; city; prosecutor; witnesses; new evidence; consultation; review defendant's right; Reber; coercion; no-contact order violation; totality of circumstances; reasonable probability; sentencing.*

A defendant appealed her conviction for aggravated disorderly conduct based on ineffective assistance of counsel. When the trial court refused to grant a continuance, defendant's retained counsel did not appear on the day of her trial, and substitute counsel was unable to proceed with the trial; ineffective assistance of counsel caused the defendant's plea to be involuntary. The court found that based on the totality of circumstances, the defendant was forced to accept a plea when she would have exercised her right to a trial. The court vacated the conviction and remanded the case to the trial court.

111544 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PHILLIP WASHINGTON

Affirmed and remanded.

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

KEY WORDS: *R.C. 2907.02(A)(1)(b); rape of a child under age 10; anal rape; penetration; force; pseudo-parental relationship; jury instructions; Crim.R. 30(A); Crim.R. 52(B); plain error; references to alleged victim as the victim; Ohio Constitution, Art. I, Sec. 9; United States Constitution, Eighth Amendment; life without parole; cruel and unusual punishment.*

The evidence presented at trial was sufficient to establish the penetration and force elements of each of the rape counts of which defendant was convicted. Defendant's rape convictions were not against the manifest weight of the evidence. Trial court properly instructed the jury regarding force in the context of a pseudo-parental relationship. Adversarial process was not undermined and defendant was not otherwise prejudiced as a result of limited usages of the term "victim" to refer to the alleged victim

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by the trial judge at the beginning of voir dire, by the assistant prosecuting attorney during voir dire and in opening statement and by a detective when referencing evidence labels. Defendant was not denied the effective assistance of counsel based on trial counsel's failure to object to or request additional jury instructions regarding the use of force and failure to object to the trial judge's, assistant prosecuting attorney's and detective's limited references to the alleged victim as the victim. Sentence of life without parole for rape of a child under the age of ten was not cruel and unusual punishment.

111703 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JEFFERY THOMAS

Reversed in part and remanded.

Eileen A. Gallagher, P.J., Michael John Ryan, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Felonious assault; firearm specification; jail-time credit; mandatory prison term; "request"; COVID; ripeness; jurisdiction.*

Following State v. Mims, 8th Dist. Cuyahoga No. 111780, 2023-Ohio-1044, trial court's sentence was contrary to law to the extent it requested that jail-time credit be applied to mandatory prison term imposed for firearm specification. Sentence vacated in part; case remanded for a limited resentencing. On remand, trial court directed to vacate the portion of defendant's sentence that applies jail-time credit to the mandatory prison term imposed on the firearm specification and to issue a new sentencing journal entry that does not include a request to apply jail-time credit to the mandatory prison term imposed on the firearm specification but instead applies that credit to the underlying felony sentence.

111790 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v JEROME FULLER

Affirmed.

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

KEY WORDS: *Restitution; economic loss; proximate cause; Marsy's law; conflict; supersede; abuse of discretion; competent and credible evidence; cap; statutory; ordinance.*

The trial court did not abuse its discretion by awarding the victim full and timely restitution pursuant to Marsy's Law where competent and credible evidence established that the victims suffered an economic loss in the amount \$7,300 as a proximate

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cause of the defendant's criminal conduct.

111870 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTOINE SMITH

Affirmed.

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

KEY WORDS: *Rape; R.C. 2907.02(A)(1)(c); sufficiency of evidence; manifest weight of evidence; vagueness; allied offenses of similar import; Reagan Tokes Law.*

Defendant was convicted of two counts of rape in violation of R.C. 2907.02(A)(1)(c) and one count of attempted rape in violation of R.C. 2923.02 and 2907.02(A)(1)(c). The convictions were based on sufficient evidence from the victim's testimony and were not against the manifest weight of the evidence. R.C. 2907.02(A)(1)(c) is not unconstitutionally vague. At trial, there was evidence the offenses were committed separately and as such were not allied offenses of similar import. The state's closing argument, when considered in context of the entire trial, did not deny defendant a fair trial by making inferences from the evidence presented. Further, the trial court properly imposed an indefinite sentence pursuant to the Reagan Tokes Law.

111872 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
A.Y. v E.Y.

Affirmed and remanded in part.

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

KEY WORDS: *Allocation of parental rights and responsibilities; abuse-of-discretion standard; R.C. 3109.04; provision of residential address; R.C. 111.46; Ohio Safe at Home Program; withdrawal order; posting a bond; R.C. 3121.03.*

The trial court did not abuse its discretion when it found it was in the best interests of the children to designate Appellee as the residential parent and legal custodian where the record supported the court's interpretation of the R.C. 3109.04(F) best interest factors. The trial court's utilization of Appellant's designated mailing address conformed with Appellant's status as an Ohio Safe at Home participant. Appellant's argument that the trial court should have required Appellee to be subject to a withholding order or post a bond for the payment of support was without merit. Where the divorce judgment entry included conflicting withholding orders, the matter was remanded for the trial court to enter a

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corrected judgment entry that accurately reflects the court's disposition on withholding.

111945 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ARMOND PRUDE v OHIO STATE BOARD OF EDUCATION

Vacated and remanded.

Eileen T. Gallagher, J., and Eileen A. Gallagher, J., concur; Anita Laster Mays, A.J., dissents (with separate opinion).

KEY WORDS: *Abuse of discretion; license; revocation; reliable; probative; substantive; recommend; administration; physical harm; unprofessional; conduct unbecoming.*

The reversal of the board's permanent revocation of the respondent's teaching license was improper because the lower court misapplied R.C. 119.12 when reversing the adjudication order. The reliability of the evidence and the unprofessional nature of the respondent's conduct was not in dispute. The board had statutory and administrative authority to permanently revoke the respondent's teaching license.

112017 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RONNIE A. STEWART

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Felony; plea agreement; guilty plea; plea colloquy; recess; Crim.R. 11; compliance; Crim.R. 11(C)(2)(c); rights; nature of the charges; penalties; postrelease control; advisement; prejudice.*

Affirmed the judgment of conviction entered upon appellant's plea of guilty to five felony offenses pursuant to a plea agreement. The record demonstrated that the trial court complied with Crim.R. 11(C)(2)(c) and that the appellant was fully informed of his constitutional rights. A lunch recess did not require the trial court to start over and readvise the appellant of his rights. The record also demonstrated the appellant's understanding of the nature of the charges and of the maximum penalties involved. Even if it was improper to provide an advisement on postrelease control, appellant failed to demonstrate any prejudice.

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112240 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE I.L.

Affirmed.

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

KEY WORDS: *Parental rights; permanent custody; manifest weight of the evidence; R.C. 2151.353; R.C. 2151.413; R.C. 2151.414; clear and convincing evidence; best interest of the child.*

The record contains clear and convincing evidence to support the trial court's finding that I.L. was in the agency's custody for 12 months or longer for a consecutive 22-month period pursuant to R.C. 2151.414(B)(1)(d), and it was in the best interest of the child to grant permanent custody to the agency. The juvenile court's grant of permanent custody of the child to the agency was not against the manifest weight of the evidence.

112341 COMMON PLEAS COURT E Civil C.P.-Not Juv, Dom Or Prob
KENNETH J. WALSH v CARMELLA A. WALSH

Affirmed.

Mary Eileen Kilbane, J., Anita Laster Mays, A.J., and Michael John Ryan, J., concur.

KEY WORDS: *Civ.R. 12(B)(1); Civ.R. 12(B)(6); motion to dismiss; lack of subject-matter jurisdiction; failure to state a claim upon which relief can be granted; dissolution; division of property; App.R. 12; App.R. 16.*

Where defendant-appellant's brief on appeal fails to comply with App.R. 12 and App.R. 16, we decline to review his assignment of error.