

November 2, 2023

112065 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JERMAINE HAGWOOD

Affirmed.

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

KEY WORDS: *Manifest weight of the evidence; cell tower triangulation; cell phone location data; cruel and unusual punishment.*

Judgment affirmed. *Appellant Hagwood's challenges to his convictions on manifest-weight grounds, particularly relating to cell phone location data, are without merit. Cell phone location data has been routinely accepted as a reliable form of evidence in Ohio and federal courts when admitted with additional evidence linking defendants to crimes. In addition to the cell phone location data, the state presented evidence connecting Hagwood to the vehicle, the co-defendants, and the weapon used in the crimes. Hagwood's DNA was also found on several items linked to the crimes. Hagwood's challenges to his sentence on cruel and unusual punishment grounds are also overruled. The trial court's sentence was within the terms of a valid statute and therefore cannot constitute cruel and unusual punishment.*

112107 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TAMARA MCLOYD

Affirmed.

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

KEY WORDS: *Grand jury; petit jury; probable cause; plain error; joinder; codefendants; robbery; sufficiency of the evidence; manifest weight of the evidence; lay testimony; cell phone; sentence; Reagan Tokes Law; constitutionality; State v. Hacker, Slip Opinion No. 2023-Ohio-2535; single maximum term; R.C. 2929.144; R.C. 2929.14(A).*

Judgment affirmed. *The trial court's advisement to prospective jurors regarding the grand jury's indictment did not constitute plain error. Neither did the joinder of defendant's trial with her codefendants. Based on the jury's verdict, it is clear that defendant was not prejudiced by the joinder. We also find that there was sufficient evidence in the record to identify defendant as one of the assailants who participated in this crime spree. Defendant's manifest weight challenge was not properly raised. However, even if we were to consider it, we find that this is not the exceptional case in which the evidence weighs heavily against a conviction.*

CASE DECISION LIST

(Case 112107 continued)

We further find that witness testimony regarding the information taken from cell phone records and a map generating defendant's cell phone location was admissible as lay testimony. Lastly, defendant's arguments regarding the constitutionality of the Reagan Tokes Law do not present novel issues or new theories challenging the constitutional validity of any aspect of law left unaddressed by the Hacker Court. In addition, R.C. 2929.144 and R.C. 2929.14(A) require the trial court to impose both a stated minimum term and a maximum term determined by the formula set forth in R.C. 2929.144, which is exactly what the trial court did in the instant case.

112162 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KEVIN KELLEY

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Domestic violence; alibi witnesses; sufficiency of evidence; family or household member.*

The trial court's exclusion of alibi witnesses from testifying did not materially prejudice appellant. There is sufficient evidence for the elevation of appellant's domestic violence to a third-degree felony based on his prior assault convictions. While the journal entries for the prior convictions did not specify that the victim in those cases was a family or household member, the transcript reflects testimony that the victim in the instant case was also the victim in the prior assault cases and she and appellant had lived together and were in a relationship since 2017 and, therefore, was "a family or household member" as statutorily defined.

112233 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALYSIA SMITH

Affirmed.

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

KEY WORDS: *Sufficient; evidence; manifest weight; credibility; burden; self-defense; felonious assault; impeach; other acts; admission; Reagan Tokes; constitutional; knowingly.*

The defendant's felonious-assault conviction is supported by sufficient evidence and is not against the manifest weight of the evidence. The defendant was not prejudiced by the victim's unfavorable testimony concerning the defendant's character and state of mind. The sentencing scheme enacted under the Reagan Tokes law is not unconstitutional.

CASE DECISION LIST

112271 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RONALD SMITH, JR.

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *R.C. 2929.14(C); consecutive-sentence findings; R.C. 2953.08(G)(2).*

Defendant was convicted of felony offenses in four separate cases against three different victims as well as being found to be in violation of community-control sanctions in three separate felony cases. The trial court imposed consecutive sentences and made findings pursuant to R.C. 2929.14(C). Defendant had a decades-long criminal history and was serving a prison sentence from another county. The appellate court cannot say the record clearly and convincingly does not support the trial court's findings pursuant to R.C. 2953.08(G)(2).

112364 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: I.S., A MINOR CHILD

Reversed and remanded.

Eileen A. Gallagher, J., Kathleen Ann Keough, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Delinquency; bindover; probable cause; aggravated murder; murder; aggravated robbery; discharge of a firearm on or near prohibited premises; felonious assault; improperly handling a firearm in a motor vehicle.*

We reverse the juvenile court's order denying the state's motion for a mandatory bindover and remand with instructions to enter a mandatory transfer order. The evidence presented at the probable-cause hearing supported a fair probability that the victim was shot to death on a public roadway and robbed of, at least, the marijuana he had brought with him to sell. The evidence supports a fair probability that the juvenile - the only person who approached the victim's car on the side where the shots seem to have been fired, who placed himself at the spot from which those shots seem to have come and whose story about another shooter from the passenger side is contradicted by forensic evidence - pulled the trigger. At this stage of the proceedings, the state need not prove the truth of its allegations against the juvenile beyond a reasonable doubt. It need only establish probable cause, which it did. Judgment reversed and case remanded.

CASE DECISION LIST

112416 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MITKO TODOROV

Affirmed.

Michael John Ryan, J., Eileen A. Gallagher, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *R.C. 2911.12, burglary; R.C. 2909.01(C), occupied structure; R.C. 2921.12(A)(1), tampering with evidence; sufficiency of the evidence; jury instructions; lesser included offense.*

Appellant's conviction for third-degree felony burglary was supported by sufficient evidence because the state showed that the house met the definition of an "occupied structure." Even though the owner did not live there full time, he occasionally stayed overnight when he was in town, the house had furniture, appliances and utilities, a handyman checked on the house at least once a week, and the homeowner was in the process of selling the house.

The state also met the elements of tampering with evidence by showing when the evidence showed that appellant moved the position of one security camera and broke the other security camera. Finder of fact could reasonably find that appellant's actions were not just to prevent immediate detection but were also to impair the camera's value or availability as evidence in an impending investigation.

The trial court did not err when it refused to instruct the jury on the lesser offense of criminal trespass.

The trial court did not err in answering a jury question regarding the definition of the word "dwelling" because it comported with Ohio law.

112465 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CRAIG HOFFMAN

Affirmed.

Michelle J. Sheehan, J., Kathleen Ann Keough, P.J., and Eileen A. Gallagher, J., concur.

KEY WORDS: *Crim.R. 11; group plea; Crim.R. 36; nunc pro tunc entry; R.C. 2929.14(C); consecutive-sentence findings; R.C. 2953.08(G); review of consecutive sentences; ineffective assistance of counsel; due process; cumulative error.*

Defendant was arrested for tampering with evidence and drug possession. Within an hour after being released from custody on those charges, defendant took a vehicle that was left running at a gas station. Defendant eventually entered a plea bargain at a plea hearing in which the trial court conducted a group plea. The record

(Case 112465 continued)

indicates defendant entered his pleas knowingly, having been fully apprised of the rights he was waiving and the penalties he faced by entering guilty pleas and was not confused because of the manner the plea was taken.

Following the plea hearing, the trial court entered a nunc pro tunc journal entry to reflect the charges to which Hoffman pleaded guilty that related back to the date of his plea, thus the nunc pro tunc entry did not result in a violation of the speedy-trial time. The trial court made the necessary consecutive-sentence findings, and the appellate court did not find that the record clearly and convincingly did not support the findings where defendant had an extensive criminal history and other pending criminal matters pending.

Defendant did not demonstrate that he received ineffective assistance of counsel where counsel did not object to the trial court's nunc pro tunc entry and misstated a fact of the offenses at the sentencing hearing. Further, having had his assignments of error overruled, defendant was not deprived of his right to due process on the basis of cumulative error.

112493 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate

R.M. v D.M.

Affirmed.

Mary J. Boyle, J., and Eileen T. Gallagher, J., concur; Mary Eileen Kilbane, P.J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Modification; tax exemption; abuse of discretion; Civ.R. 7; change in circumstance; best interest of the children; R.C. 3119.82.*

Judgment affirmed. Father has failed to demonstrate that the court abused its discretion in its decision to modify the tax exemption allocation. There is no evidence in the record that the court exercised its judgment in an unwarranted way when it reviewed the single issue on the briefs instead of a holding a hearing on the matter. The magistrate thoroughly considered the factors set forth in R.C. 3119.82, and found the tax exemption would best be shared equally between Father and Mother beginning the tax year 2020 and going forward.

112543 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: M.C.

Affirmed.

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

KEY WORDS: *Temporary custody; abuse; dependency; endangering children; R.C. 2919.22; chain to bed; magistrate decision; failure to file objection; plain error; Juv.R. 40.*

The trial court did not err in awarding temporary custody to the agency. Evidence in the record supported the court adjudicating the child abused and dependent because the mother chained the child to her bed at night, which could constitute endangering children pursuant to R.C. 2919.22. Further, the mother did not object to the magistrate adjudicating the child dependent and finding that the child's return to the mother was not in the child's best interest, therefore, the mother waived all but plain error on appeal. The court did not plainly err in adjudicating the child dependent because the record supported the court's adjudication and disposition.

112553 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NICK IANNETTA v AMAZON, INC.

Affirmed.

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

KEY WORDS: *Motion to dismiss for failure to state a claim; Civ.R. 12(B)(6); R.C. 2317.48; discovery complaint.*

The trial court did not err when it granted defendant's Civ.R. 12(B)(6) motion to dismiss because plaintiff's complaint failed to state a claim upon which relief could be granted.

112627 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ROBERT PERRY

Affirmed.

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

KEY WORDS: *Indigency; court costs; supervision fees; ineffective assistance of counsel; waiver of court costs; prejudice; community-control sanctions.*

Absent any evidence of prejudice - or evidence that there is a reasonable probability that but for counsel's alleged error, the trial court would have waived defendant's court costs - defendant did not demonstrate ineffective assistance of counsel. Defendant's argument that the trial court imposed a one-year maximum sentence subject to R.C. 2929.14(C) and 2929.19(B)(2)(d) is without merit where the trial court imposed community-control sanctions rather than a prison term.

CASE DECISION LIST

112746 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE CONTEMPT OF: CARL MALLORY-NICHOLS

Vacated.

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

KEY WORDS: *Contempt; civil; criminal; indirect; direct; beyond a reasonable doubt; intent.*

Judgment vacated. The juvenile court erred in finding Mallory-Nichols guilty of contempt. Mallory-Nichols was not afforded the opportunity to purge himself of the contempt, which indicates his sentence was intended to be punitive. The court intended to punish Mallory-Nichols for his failure to comply with the court's order, not compel his immediate compliance. Thus, we find that the court's contempt sanction was criminal in nature, not civil. With criminal contempt, a contemnor cannot be given a criminal contempt sanction unless proven guilty beyond a reasonable doubt and it must be shown that the contemnor intended to violate the court's orders. Here, the court did not find that Mallory-Nichols was guilty beyond a reasonable doubt and the testimony at the hearing and the totality of the circumstances do not demonstrate that Mallory-Nichols intended to violate the court's order when he permitted the unsupervised visits.

112747 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE N.S., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; right to counsel; best interests of the child.*

Juvenile court did not err when it refused to appoint independent counsel for child because of alleged conflict between child's wishes and guardian's recommendation. In the final guardian ad litem report, five-year-old child expressed a desire to return home to Mother and a desire to remain in foster care. Child's one statement did not conflict with the guardian ad litem's recommendation for permanent custody.

Appellant did not request counsel for the child's sibling and thus waived the issue absent plain error. However, appellant did not develop a plain error argument before the appellate court; accordingly the court was not required to review it.

Finally, the record supported the trial court's findings in support of permanent custody. Although appellant had succeeded in some

CASE DECISION LIST

(Case 112747 continued)

aspects of her case plan by the time of the permanent custody hearing, she had previously attended nine treatment facilities and suffered multiple relapses. The children had been in custody with the agency for over two years and there were no relative placements. Accordingly, permanent custody was in the best interest of the children.