

September 14, 2023**112016** COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAVID GOODYKOONTZ

Affirmed.

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

KEY WORDS: *Crim.R. 29(A), sufficiency, pandering, R.C. 2907.322, illegal use of a minor in nudity-oriented material or performance, R.C. 2907.323, possessing criminal tools, manifest weight of the evidence, consecutive sentences, sentencing factors, R.C. 2929.11, R.C. 2929.12, gross sexual imposition, R.C. 2907.05(A)(4), forfeiture of property, affirmative defense, proper purpose.*

Judgment affirmed. Defendant failed to demonstrate that he was entitled to an affirmative defense jury instruction pursuant to R.C. 2907.323 A)(1)(a) and (b) or R.C. 2907.322(B)(1). Defendant failed to offer evidence that he had a proper interest in the prohibited materials, and his convictions were not against the manifest weight of the evidence.

112053 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v THEOPLIC WILLIAMS III

Affirmed.

Frank Daniel Celebrezze, III, P.J.; Eileen A. Gallagher, J., concurs in judgment only; Emanuella D. Groves, J., concurs in judgment only.

KEY WORDS: *Obstructing official business; R.C. 2921.31; sufficiency of the evidence; affirmative act by defendant; struggle with police; fleeing the scene; manifest weight of the evidence; investigatory stop; reasonable force; objectively reasonable; jury instruction; flight; consciousness of guilt; abuse of discretion; affirmative steps to avoid detection and apprehension.*

Appellant's conviction for obstructing official business was supported by sufficient evidence and was not against the manifest weight of the evidence where appellant struggled with and fled police. Because sufficient evidence was presented at trial to warrant the flight instruction, the trial court did not abuse its discretion in instructing the jury on flight.

CASE DECISION LIST

112177 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
RAYMOND C. HERRING v SHERRLENA D. COLEMAN

Affirmed in part and vacated in part.

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

KEY WORDS: *Jurisdiction; domestic relations matters; marriage.*

Trial court did not err when it dismissed appellant's case for lack of jurisdiction. Appellant sought declaratory judgment that there never existed a marriage between himself and appellee.

Determination of the existence of a marriage is one of the exclusive duties of the domestic relations court. As the trial court lacked jurisdiction, the remainder of the entry finding no cognizable issue pending is vacated.

112194 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SIARA WILLIAMS

Affirmed in part, modified in part, and remanded.

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

KEY WORDS: *Lesser-included offense instruction; verdict form; R.C. 2903.13(C); R.C. 2945.75(A)(2); assault; felonious assault; under the influence; jury instructions; sufficiency of the evidence; manifest weight of the evidence; ineffective assistance of counsel.*

Because assault of a peace officer under R.C. 2903.13(A) is a lesser-included offense of felonious assault of a police officer under R.C. 2903.11(A)(1), the trial court properly instructed the jury that if it found the defendant not guilty of felonious assault, it could consider the lesser-included offense of assault; where the verdict form did not require the jury to find that the victim, at the time of the offense, was a peace officer while in the performance of the officer's official duties, defendant's conviction for fourth-degree felony assault was modified to first-degree-misdemeanor assault; because the evidence at trial was more than sufficient to demonstrate that the defendant was under the influence of alcohol such that the intoxication impaired her actions, reactions, and mental processes, and the jury would have convicted her if the correct instruction had been given, no error was found in the jury instructions despite the trial court's failure to instruct on the meaning of "under the influence"; defendant's convictions for assault on two police officers and driving under the influence were affirmed because they were supported by sufficient evidence and not against the manifest weight of the evidence; defense counsel was not ineffective because no prejudicial error was found.

CASE DECISION LIST

112196 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANDRE GRAY, JR.

Affirmed.

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

KEY WORDS: *Guilty plea; sentencing hearing; mandatory sentence; Crim.R. 11(C).*

Trial court fully complied with Crim.R. 11(C) when it advised the defendant before he entered his plea that any sentence on a failure to comply offense would be served consecutively to any other prison sentence, and the defendant stated he so understood. The trial court's erroneous advisement at the subsequent sentencing hearing that a failure to comply offense requires a mandatory prison sentence did not affect the knowing, voluntary, and intelligent nature of the defendant's guilty plea at the earlier plea hearing.

112205 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v NATHANIEL MCCOLLINS

Affirmed in part, reversed in part, and remanded.

Michelle J. Sheehan, P.J., Lisa B. Forbes, J., and Mary J. Boyle, J., concur.

KEY WORDS: *R.C. 2921.331; level of offense; App.R. 12; discretion; invited error; App.R. 3; necessity of cross-appeal.*

Defendant-appellee was convicted of several felonies and was sentenced to concurrent 12-month prison sentences. As part of the plea bargain leading to defendant's convictions, the state offered an amendment to one of the charged felony offenses, failure to comply in violation of R.C. 2921.331. The amendment reduced the level of offense from a felony of the third degree to a misdemeanor offense. The trial court imposed a sentence on the charge as if it were a felony of the fourth degree, but declined to order the sentence to be served consecutively to other prison sentences imposed on defendant.

Having believed that the defendant entered a plea to felony violation of R.C. 2921.331, the state appealed the trial court's failure to impose consecutive sentences. Without filing either a direct appeal or cross-appeal, defendant-appellee stated the record showed that he pleaded guilty to a misdemeanor offense, but was sentenced to prison. Defendant-appellee asked that the judgment be reversed and that he be resentenced. In its reply brief, the state conceded that defendant-appellee was sentenced to prison for a misdemeanor offense and asked that the trial court be ordered to resentence defendant-appellee or, in the alternative, that the plea be

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rescinded.

Appellate courts will generally not consider errors not properly raised by appellant in assignments of error or raised for the first time in a reply brief. The state's attempt to raise a new argument regarding propriety of plea will not be considered. Further, any error in the plea was invited error as state proposed the amendment to the indictment. Additionally, an appellee cannot seek to overturn the judgment appealed without filing either a direct appeal of the judgment or a cross-appeal.

An appellate court has a limited ability to notice errors not properly raised by the parties where the parties have had the opportunity to brief the issues and the interests of justice demand the error to be noticed.

The trial court's error in sentencing a defendant who committed a misdemeanor to a prison sentence is an error antithetical to the administration of justice. Despite the failure of the parties to properly raise the error, the prison sentence imposed for the misdemeanor offense was reversed and the cause remanded to trial court for sentencing on that charge only.

112208	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
KENDAL C. INCZE v NORMAN E. INCZE			

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Motion to modify child support; motion to correct a prior judgment entry; continuation of hearing; res judicata.

Appellant's claims that the trial court's judgment went beyond the scope of the motion to modify the child support and that the trial court violated her due process in proceeding with the hearing in her absence could have been raised on a direct appeal. Appellant's motion to correct a prior judgment entry is an improper, untimely attempt to seek an appellate review of the trial court's prior judgment.

112295	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v STACY NAGY			

112297	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v STACY NAGY			

Affirmed.

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

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

Defendant was convicted of six felony offenses in two separate cases. The trial court imposed consecutive sentences, making findings pursuant to R.C. 2929.14(C). Defendant had a criminal history that included a conviction for a violent offense and had served a prior prison sentence. The defendant further committed multiple crimes on separate days and caused particular harm to the victim of identity fraud. 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).

112558	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MARIOUS SOWELL			

Affirmed.

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

KEY WORDS: *Final, appealable order; jurisdiction; void; voidable; postconviction relief.*

Trial court properly overruled successive petition to vacate the sentence on a repeat-violent-offender specification where the arguments raised were barred by res judicata.