

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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April 11, 2024

111875 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v MICHAEL DUDAS

Reversed and remanded.

Eileen A. Gallagher, P.J., Mary Eileen Kilbane, J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Denial of timely filed petition for postconviction relief; R.C. 2953.21(A); findings of fact and conclusions of law; R.C. 2953.21(D); R.C. 2953.21(H).*

Trial court erred in denying appellant's timely petition for postconviction relief without making findings of fact and conclusions of law; judgment reversed and case remanded for the trial court to issue findings of fact and conclusions of law as required by R.C. 2953.21.

112214 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ASHUNTE SMITH

113039 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIE S. SMITH

Affirmed in part, reversed in part and remanded.

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

KEY WORDS: *Crim.R. 33; motion for leave to file a motion for a new trial; hearing; newly discovered evidence; recanting witness; abuse of discretion; unavoidably prevented from timely discovering new evidence; findings of fact and conclusions of law.*

Trial court abused its discretion in denying appellants' motions for leave to file a motion for a new trial without a hearing as it related to witness' recantation of his trial testimony. Appellants submitted documents that, on their face, together with other evidence in the record, could support their claims that they were unavoidably prevented from discovering witness' recantation within the required time frame.

Trial court did not abuse its discretion in denying appellant leave to file a motion for a new trial without a hearing based on new information allegedly contained within transcripts from other appellant's trial. Appellant did not submit documents with his motion that, on their face, supported his claim that he was unavoidably prevented from timely discovering any such new evidence.

Crim.R. 33 does not require trial court to issue findings of fact and conclusions of law when denying motion for leave to file a motion for a new trial.

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112624	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MAKEBA THOMAS			

Affirmed.

Mary J. Boyle, J., and Eileen T. Gallagher, P.J., concur; Frank Daniel Celebrezze, III, J., concurs in judgment only (with separate opinion).

KEY WORDS: *Motion to suppress; R.C. 306.35(Y); plain meaning; RTA officers; authority; jurisdiction; within transit facilities; Fourth Amendment; Article I, Section 14 of the Ohio Constitution unreasonable searches and seizures.*

Affirmed. *R.C. 306.35(Y) is unambiguous. Applying the plain and ordinary meaning of the statute, GCRTA officers are granted with the authority to act as peace officers within transit facilities owned, operated, or leased by the GCRTA. The plain language of R.C. 306.35(Y) does not support the interpretation proposed by the state. Furthermore, under Brown, 143 Ohio St.3d 444, 2015-Ohio-2438, 39 N.E.3d 496, ¶ 26, the GCRTA officers' attempted traffic stop on a public road for an allegedly minor misdemeanor and Thomas's subsequent arrest at her home nearly one month later was outside the GCRTA officers' statutory authority and violated the guarantee against unreasonable searches and seizures established by Article I, Section 14 of the Ohio Constitution. Therefore, the trial court properly suppressed any evidence obtained by the GCRTA police officers.*

112715	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KAYLYNN COUNTS			

112775	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v KAYLYNN COUNTS			

Reversed and Remanded.

Anita Laster Mays, J., and Emanuella D. Groves, J., concur; Eileen T. Gallagher, P.J., concurs in judgment only.

KEY WORDS: *Speedy trial; R.C. 2945.72; Marsy's Law.*

The appellee's speedy trial rights were not violated by the victims' filing an appeal, because the time tolled in accordance with R.C. 2945.72(E) and (H).

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112737 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v CHRISTIAN REED

Affirmed.

Michelle J. Sheehan, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Manifest weight of the evidence; conflicting testimony; credibility determination.*

Defendant was convicted after trial of abduction and assault. Defendant asserted on appeal his convictions were against the manifest weight of the evidence because of contradictions in the victim's testimony and her actions as well as contradictions with other testimony. The determination of credibility and resolving conflicts in testimony and evidence rest solely with the finder of fact, and an appellate court may not substitute its own judgment for that of the finder of fact. After review of the record, the finder of fact did not clearly lose its way and create a manifest miscarriage of justice necessitating reversal of defendant's convictions.

112826 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v PAUL HAMRICK

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Menacing by stalking; R.C. 2903.211; protective order; sufficiency; manifest weight; admissibility; authentication; Evid.R. 901(A); mistrial; abuse of discretion.*

Judgment affirmed. The court properly denied Hamrick's Crim.R. 29 motion for acquittal because his menacing by stalking conviction was supported by sufficient evidence. Furthermore, his convictions of menacing by stalking and violation of protection order were not against the manifest weight of the evidence. The Duo messages at issue were admissible because they were properly authenticated by H.C. under Evid.R. 901. Finally, the court did not abuse its discretion in denying Hamrick's motion for a mistrial because the state did not willfully fail to turn over evidence in discovery.

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112921 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ARTHUR BETHEL

Affirmed.

Frank Daniel Celebrezze, III, J., Mary Eileen Kilbane, P.J., and Lisa B. Forbes, J., concur.

KEY WORDS: *Crim.R. 29; motion for acquittal; sufficiency of the evidence; circumstantial evidence; probative value; knowingly; manifest weight of the evidence; inconsistent testimony; direct identification unnecessary.*

The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal, and appellant's convictions were not against the manifest weight of the evidence.

113013 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RANDY COSTLOW

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *R.C. 2929.14(A)(3)(a); third-degree felony; sentencing; impact statements; R.C. 2929.19; sentencing review; App.R. 16(A)(7).*

Affirmed. The trial court properly sentenced the defendant to five years in prison on his guilty plea to a third-degree felony, gross sexual imposition offense under R.C. 2929.14(A)(3)(a), and the offender has not demonstrated error with citations to relevant authority regarding the court's decision to consider impact statements from friends and family of the victim or to impose the particular sentence entered.

113058 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v JEROME GARRETT

Affirmed.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Petition for postconviction relief; evidentiary hearing; res judicata; ineffective assistance of counsel.*

Judgment affirmed. The trial court did not err in denying defendant-appellant Jerome Garrett's untimely amended petition for

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postconviction relief when all the evidence submitted in support of his petition had already been considered and rejected by this court during his direct appeal, barring Garrett's claims by res judicata. Because Garrett did not demonstrate that he was unavoidably prevented from discovering the evidence prompting the postconviction petition, the trial court also did not err in failing to hold an evidentiary hearing.

113076 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
AMIN, TUROCY & WATSON LLP v JUST FUNKY LLC

Affirmed.

Michael John Ryan, J., Lisa B. Forbes, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Summary judgment; unpaid legal services; expert report; self-serving affidavit; Civ.R. 54(C).*

Judgment affirmed. The trial court properly entered summary judgment in favor of the plaintiff law firm on its claim for unpaid legal services. The law firm's motion for summary judgment was supported by an affidavit and specific, corroborating evidence. The trial court properly found the defendant's affidavit submitted in opposition to the law firm's motion was self-serving. Although the affiant claimed that the law firm overcharged it, the supporting documentation was deficient in lending support to that claim.

The amount of the judgment in favor of the plaintiff law firm was proper under Civ.R. 54(C). Although it is a different amount than prayed for in the complaint, the plaintiff's documentation supports the amount.

113096 BEDFORD MUNI. G Civil Muni. & City
CUYAHOGA SUPPLY & TOOL, INC. v BECDIR CONSTRUCTION COMPANY

Reversed and remanded.

Frank Daniel Celebrezze, III, J., and Eileen A. Gallagher, P.J., concur; Sean C. Gallagher, J., dissents (with separate opinion).

KEY WORDS: *Motion to compel arbitration and/or stay proceedings; abuse of discretion; contractual interpretation; de novo review; R.C. 2711.02; written arbitration agreement; agreement not signed; intent to be bound; meeting of the minds; performance of contract containing arbitration clause.*

Appellee's performance under the purchase order constituted its acceptance of the terms contained therein, including the arbitration clause. Thus, the dispute between the parties, which arose out of

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the purchase order, was required to be arbitrated. The trial court erred in denying the motion to compel arbitration and stay proceedings.

113107	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v DOMINIQUE ARTAGOS			

Affirmed in part and vacated in part.

Eileen T. Gallagher, J., Michelle J. Sheehan, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: Improper handling of a firearm in a motor vehicle; under the influence; sufficiency; manifest weight; child support; community control.

Appellant's improper handling of a firearm in a motor vehicle conviction was supported by sufficient evidence and was not against the manifest weight of the evidence where competent, credible evidence established that appellant was intoxicated and there was evidence of alcohol and marijuana in his car.

Condition of community control that required appellant to establish a child-support order was an abuse of discretion where the community-control condition was not related to the offense.

113165	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v AMIRA DUNCAN			

113169	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v AMIRA DUNCAN			

Affirmed and remanded.

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

KEY WORDS: Nunc pro tunc; plea and sentence.

The trial court's journal entries reflecting appellant's plea and sentence incorrectly stated the crime that appellant pleaded guilty to. Case remanded for issuance of nunc pro tunc journal entries.

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113196 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAMES JOHNSON

Affirmed.

Frank Daniel Celebrezze, III, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Final appealable order; nunc pro tunc; finality of judgment for appeal.*

Judgment affirmed. *The trial court did not err in entering a nunc pro tunc sentencing entry renumbering the counts to the proper counts utilized at trial because this action was not inconsistent with this court's jurisdiction. Further, the nunc pro tunc entry did not extend defendant's time to file an appeal nor did service of the nunc pro tunc entry affect the finality of the judgment.*

113277 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: T.H., ET AL.

Affirmed.

Michael John Ryan, J., Emanuella D. Groves, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Permanent custody; manifest weight of the evidence; clear and convincing evidence; R.C. 2151.414(E); R.C. 2151.414(B) and (D).*

The trial court's decision to grant permanent custody of appellant's children was not against the manifest weight of the evidence and there was clear and convincing evidence in the record to support the court's decision. *While appellant engaged in mental health, domestic violence, and anger management classes he was unable to show that he benefitted from services. Appellant did not establish sobriety and was continually angry and aggressive towards agency staff. Although the agency and the court gave appellant numerous chances, visitation had to be stopped due to appellant's volatile behavior.*