

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 6

April 18, 2024

112630 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v DANIELLE NEAL

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Domestic violence; sufficiency; manifest weight; body-camera footage; Confrontation Clause.*

The city presented evidence that, if believed, demonstrated that appellant caused physical harm to her mother during a fight at her mother's house. Therefore, appellant's conviction was not against the sufficiency of the evidence. Appellant's conviction is also not against the manifest weight of the evidence because the trier of fact was in the best position to consider the inconsistencies between appellant's and her mother's testimony regarding the fight.

Finally, the court's decision to admit into evidence the body-camera footage of a responding police officer did not violate appellant's confrontation-clause rights because the body-camera footage depicted her mother's encounter with police as the victim and she testified at trial and was subject to cross-examination.

112679 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v SAMMY MONTANEZ

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Pro se litigants; motion for resentencing; failure to file transcript; presume regularity. Trial court's denial of motion for resentencing is affirmed.*

Pro se defendant failed to file a transcript of the resentencing hearing, and we must presume regularity of the proceedings below.

112741 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY JAMES

Affirmed.

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

CASE DECISION LIST

(Case 112741 continued)

KEY WORDS: Abuse of discretion; evidentiary rulings; sufficiency of evidence; weight of evidence; speedy trial; ineffective assistance of counsel; jury instruction; consecutive sentences.

Judgment affirmed. The trial court did not abuse its discretion by admitting certain evidence. The state immediately alerted the defense to newly discovered evidence as soon as it became known to the state. It was established that the state's failure to provide it earlier was not a willful violation of Crim.R. 16. The source of the newly discovered evidence was not a surprise to appellant; the person who provided the evidence was named in discovery and the evidence was statements made by appellant. Appellant has failed to demonstrate how the evidence was prejudicial to him.

Other evidence admitted by the trial court was relevant to demonstrate appellant's self-interest in the case and its probative value was not substantially outweighed by prejudice.

The testimony of the sole eyewitness to the shooting was sufficient to support the murder conviction. The testimony was sufficient to support the aggravated robbery convictions; the fact that nothing was taken from the victims was not dispositive because the governing statute provides that an attempt to commit a theft offense is sufficient.

The convictions were not against the manifest weight of the evidence. The jury's credibility determination was not incredible. The video evidence was properly authenticated, and the witness testimony established a proper chain of custody.

Appellant's speedy trial rights were not violated. The delay in this case was overwhelmingly attributed to appellant's constant change of counsel, requests for continuances, and numerous motions.

Appellant was not denied the effective assistance of counsel. The testimony appellant complains that his counsel failed to object to was not hearsay. The evidence for which appellant contends there was no authentication or chain of custody was properly authenticated and a chain of custody was established.

The record supports the imposition of consecutive sentences. The robberies and fatal shooting, on which consecutive terms were imposed, were separate and distinct acts, separated by a period of time. We are not able to say that the records clearly and convincingly do not support the trial court's consecutive-sentence findings.

112835 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MARIAH CRENSHAW v CHELSEY MOONINGHAM

Affirmed.

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

CASE DECISION LIST

in part and dissents in part (with separate opinion).

KEY WORDS: *Motion for summary judgment; de novo review; defamation; evidence; affidavit; conclusory assertions; genuine issue of material fact; intentional infliction of emotional distress; severe, debilitating emotional injury; spoliation of evidence; disruption of plaintiff's case; vexatious litigator; R.C. 2323.52; vexatious conduct.*

The trial court did not err in granting summary judgment on appellant's claims where appellant did not present evidence to demonstrate a genuine issue of material fact remained as to any of her claims.

112900	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
LINDA HEIGEL v THE METROHEALTH SYSTEM, ET AL.			

Affirmed.

Michael John Ryan, J., Mary Eileen Kilbane, P.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Civ.R. 56; summary judgment; App.R. 16; App.R. 12; at will employment; wrongful discharge in violation of public policy; clarity element.*

Appellant fails to separately argue her assignments of error, but in the interest of judicial fairness, we address the assigned errors.

The trial court did not err in granting summary judgment in favor of appellees when appellant was unable to show that there were genuine issues of material fact. Although there is a clear public policy favoring workplace safety, appellant was unable to identify a public policy exception to the at will employment doctrine that is applicable to her claims.

113012	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v RAYMOND KIRK FRANCIS			

Affirmed.

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

KEY WORDS: *Consecutive; maximum sentence; involuntary manslaughter.*

Judgment affirmed. The trial court made the statutorily required findings for the imposition of consecutive sentences. We are unable to say that the record clearly and convincingly does not support the court's findings.

The trial court was not required to make any findings in imposing

CASE DECISION LIST

(Case 113012 continued)

maximum sentences. The trial court considered the factors set forth in R.C. 2929.11 and 2929.12 and sentenced the defendant within the statutory range. We do not find that the defendant's maximum sentences were clearly and convincingly unsupported by the evidence.

113035 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GWENETTA SMITH

Reversed and vacated.

Emanuella D. Groves, J., and Eileen A. Gallagher, P.J., concur; Eileen T. Gallagher, J., dissents (with separate opinion).

KEY WORDS: Search warrant; sufficiency; possession of controlled substances; criminal tools; medical marijuana; fruit of the search; manifest weight; possession; immediately within reach; marijuana dispensary; direct physical control; constructive possession; knowingly exercises dominion.

Judgment reversed and convictions vacated. The appellant's convictions for drug possession and criminal tools were not supported by sufficient evidence. The state failed to prove, beyond a reasonable doubt, that the appellant had constructive possession of drugs or criminal tools where the state offered no evidence that the appellant had dominion or control over the area of the home where the illegal quantity of marijuana was found in the home she shared with her spouse, who held a medical marijuana license.

113051 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v XAVIER HEMPSTEAD

Reversed and remanded.

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

KEY WORDS: Sentence; jail-time credit; specification; firearm; mandatory; contrary to law; prison term; resentencing.

The sentence imposed on defendant for involuntary manslaughter with a firearm specification was contrary to law because the trial court had improperly applied jail-time credit to defendant's mandatory firearm-specification sentence.

CASE DECISION LIST

113116 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
OHIO BELL TELEPHONE COMPANY v CITY OF CLEVELAND

Affirmed.

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

KEY WORDS: *Political-subdivision immunity; negligence; res ipsa loquitur; defense; R.C. Chapter 2744; R.C. 2744.03(A)(5).*

Plaintiff established prima facie case of negligence through doctrine of res ipsa loquitur where defendant was the last contractor to have access at the site where the damage occurred.

Decisions by city employees about where to excavate an area to repair a water line is not the kind of decision to which political-subdivision immunity attaches.

113152 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE OF OHIO v ARTO D. GREEN, II

Affirmed.

Kathleen Ann Keough, A.J., Michelle J. Sheehan, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Res judicata; Crim.R. 32.1; ineffective assistance of counsel.*

Res judicata bars appellant's Crim.R. 32.1 motion to withdraw his guilty plea premised on ineffective assistance of counsel because he could have brought his claims in a direct appeal or in his delayed appeal.

113330 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v RONNIE OLIVER

Affirmed.

Eileen A. Gallagher, J., Kathleen Ann Keough, A.J., and Mary Eileen Kilbane, J., concur.

KEY WORDS: *Driving under the influence; C.C.O. 433.01(a); administrative license suspension; initial appearance; R.C. 4511.191(D)(2); R.C. 4511.196(A).*

Trial court did not err in denying motion to dismiss underlying criminal charges when defendant's initial appearance was not held within five-day time frame specified in R.C. 4511.191(D)(2) and

CASE DECISION LIST

(Case 113330 continued)

4511.196(A). The purpose for requiring initial appearance to be held within five days was to provide defendant with the opportunity to appeal the administrative license suspension, and trial court granted defendant's motion to dismiss as it related to the administrative license suspension.