

CASE DECISION LIST**April 25, 2024**

112269 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KIELONTE HARRIS

Affirmed.

Mary J. Boyle, J., Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Aggravated murder, murder, aggravated burglary, aggravated robbery, kidnapping, felonious assault, and having a weapon while under disability; sufficiency; manifest weight; mistrial; unadmitted evidence to jury; expert testimony; Evid.R. 702; Crim.R. 16; harmless error; authentication; Evid.R. 901; missing evidence; prosecutor opening statement; misstatement.*

Judgment affirmed. *Court's exhibit No. 5 was included with the trial exhibits in error, but no harm came to the defendant by way of the momentary possession of the court's exhibit by the jury. Certain portions of testimony by forensic video analyst Ciula in this case consisted of expert testimony as set forth in Evid.R. 702. However, the harmless error analysis applies to those portions of Ciula's testimony that were expert opinion testimony, and the overwhelming evidence of defendant's guilt in this case means that the outcome of trial would not have been different. Crim.R. 16 was complied with because the trial court exercised its discretion and found that the expert's report was not new discovery, and even if it was, it could have been discussed when it was received, which was four days before the jury was sworn in. The state's exhibits defendant challenges were properly authenticated by the state and admissible. Furthermore, defendant fails to demonstrate how the missing crime-scene log would have been material to the case and cannot demonstrate that the failure to preserve the crime-scene log was in bad faith. There is sufficient evidence to sustain defendant's convictions and his convictions are not against the weight of the evidence based on the testimony of the four eyewitnesses combined with the defendant's own admission, the ankle monitor GPS data and the surveillance video identifying defendant and the shooter and placing at the scene of the crime. Lastly, the prosecutor's isolated misstatement did not prejudicially affect the outcome of his case because defense counsel immediately brought the misstatement to the jury's attention and the prosecutor also admitted to the jury through a witness's testimony that he made a mistake.*

112270 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NATIONSTAR MORTGAGE LLC v IVELAW SCARVILLE, ET AL.

113139 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
NATIONSTAR MORTGAGE LLC v IVELAW SCARVILLE, ET AL.

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Affirmed.

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

KEY WORDS: *Dormancy; motion to intervene; Civ.R. 24(A); Civ.R. 24(B); untimely.*

Trial court properly overruled motion to intervene filed by successors-in-interest to the debtor in foreclosure action because they failed to timely file the motion.

112384 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
VERONICA TRAINER v MICHAEL P. TRAINER, SR.

Affirmed.

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

KEY WORDS: *Divorce; spousal support; modification; change in circumstances; indefinite support; long term marriage; imputed income; retirement; magistrate's decision; abuse of discretion; R.C. 3105.18.*

Judgment affirmed. The trial court did not abuse its discretion when it modified Husband's spousal support obligation to \$2,500 per month. Husband voluntarily retired at the age of 69 years old, with a change in his employer's administration leadership and declining health. This constitutes a substantial change in circumstances that makes the existing award of \$12,000 per month unreasonable, given his estimated post-retirement income reduced to \$109,300 from \$643,197. The court considered all the R.C. 3105.18 factors and made findings for each, ultimately explaining how they impacted the decision to modify Husband's spousal support obligation. The court did not abuse its discretion when it imputed to Wife a \$25,000 annual income because the court considered and weighed the spouses' relative earning abilities along with other factors to arrive at a reasonable spousal support amount and term. Additionally, the trial court did not abuse its discretion in awarding indefinite spousal support because marriage was of long duration (28 years) and statutory findings were supported by competent credible evidence.

112518 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ZINO KIRBY

Affirmed.

Michelle J. Sheehan, J., Frank Daniel Celebrezze, III, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *Attempted rape; abduction; Rape Shield Statute; R.C.*

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(Case 112518 continued)

2907.02(D); exclusion of evidence; balancing test; sufficiency of the evidence; manifest weight of the evidence; conflicting testimony; credibility determination.

Defendant was convicted after trial of attempted rape and abduction. Defendant asserted on appeal the trial court erred by excluding evidence pursuant to R.C. 2907.02(D). The trial court excluded evidence that was specific to the victim's past sexual activity and, by allowing general testimony that conversations between defendant and complainant were of a sexual nature, the trial court balanced defendant's due process rights against the state's interest in precluding evidence under the Rape Shield Statute. The convictions were based on sufficient evidence where the complainant's testimony went to all elements of the crimes charged. Further, the convictions were not against the manifest weight of the evidence where the victim's testimony was not inherently incredible, the testimony was bolstered by defendant's apologies, and where the determination of credibility and resolving conflicts in testimony and evidence rests solely with the finder of fact.

112675	EUCLID MUNI.	C	Criminal Muni. & City
CITY OF EUCLID v MICHAEL AMIOTT			

Vacated.

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

KEY WORDS: *Right to speedy trial; R.C. 2945.71; extension of time; tolling; R.C. 2945.72; reasonable continuance; motion to dismiss; expiration; prima facie case for dismissal; state's burden of production; statutory time limit; first-degree misdemeanor; 90 days after arrest or service of summons; recusal of trial judge; visiting judge assigned; no time waiver executed; sua sponte continuance; journal entry containing reasons for continuance.*

The trial court erred in proceeding to trial after the speedy-trial time had elapsed where appellant had not waived his right to a speedy trial.

112720	CLEVELAND MUNI.	C	Criminal Muni. & City
CITY OF CLEVELAND v ANGELA C. WHITE			

Affirmed.

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

KEY WORDS: *Telecommunications harassment; CCO 621.10; text messages; emails; sufficiency of the evidence; jury instruction;*

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(Case 112720 continued)

plain error; prejudice; admission of testimony; Evid.R. 1002; harmless error; manifest weight of the evidence; criminal complaint; defect in indictment; Crim.R. 12(C)(2); R.C. 2941.29; ineffective assistance of counsel.

The trial court did not err in misstating the date of the offense, treating the criminal complaint as charging two offenses, or admitting testimony from the victim regarding the content of text messages. Appellant's conviction was supported by sufficient evidence and not against the manifest weight of the evidence. Finally, appellant did not receive ineffective assistance of counsel.

112847	DOMESTIC RELATIONS	F	Civil C.P.-Juv, Dom, Probate
A. E. v J. E.			

Reversed and remanded.

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

KEY WORDS: Financial misconduct; spousal support; child support; marital property; marital home; temporary spousal support; attorney fees; marital debt; loan; life insurance; proposed shared parenting; parenting time; restraining orders.

Trial court erred in finding that husband committed financial misconduct by dissipating marital funds when he liquidated restricted stock units when the court restrained his income and he had no other means of paying his tax liabilities.

The trial court erred by ordering husband to pay wife more than half of his income as temporary spousal support.

The trial court erred in substituting its own valuation for the marital home based on the court's review of comparable home values instead of the valuation of husband's appraiser, who appraised the property one month before trial.

Trial court erred in ordering husband to pay wife's attorney fees when there was no evidence that he was in a superior financial position or that he caused wife to incur an increase in attorney fees.

Trial court erred in requiring husband to pay off a loan wife received from her parents when the loan was used to pay college tuitions for the parties' adult children and to pay real estate taxes on the parties' marital home, which was wife's responsibility.

Trial court erred in designating wife the beneficiary of a lapsed insurance policy.

Trial court erred in not adopting the husband's shared parenting plan and in finding that a reduction in father's parenting time was in the child's best interest.

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(Case 112847 continued)

The trial court failed to account for funding missing from wife's lawyer's IOLTA account.

Trial court erred in leaving all restraining orders in place without specifically identifying the restraining orders and identifying the restrained parties.

112879 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTONIO KENNEDY

Affirmed.

Anita Laster Mays, J., Eileen A. Gallagher, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Evid.R. 404(B)*, ineffective assistance of counsel, sufficiency, and manifest weight of the evidence.

The trial court's admission of evidence during appellant's bench trial did not violate Evid.R. 404(B). The evidence was provided to the defense prior to trial, was presented for a legitimate purpose, and the probative value was not substantially outweighed by the danger of unfair prejudice. The admission did not overcome the presumption of regularity afforded the trial court to know and follow the law.

Counsel did not fail to address the issue of secondary DNA transfer and thus was not ineffective. The evidence was not insufficient as a matter of law nor were the convictions against the manifest weight of the evidence.

113078 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARLON HALE, SR.

Affirmed.

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

KEY WORDS: *Aggravated murder; murder; felonious assault; attempted felonious assault; menacing by stalking; Evid.R. 404(B); other-acts evidence; severance; joinder; inferior offenses; jury instructions; aggravated assault; voluntary manslaughter; mitigating evidence; sudden passion or fit of rage; autopsy photos; sufficiency and manifest weight.*

The trial court did not err when it denied Hale's motion to sever the menacing by stalking charge from the other charges because the evidence was simple and direct, and the state would have been able to present evidence of the other crimes at separate trials had it tried them separately. The other-acts evidence was relevant to a

(Case 113078 continued)

permissible purpose under Evid.R. 404(B)(2) and not unfairly prejudicial under Evid.R. 403(A). The trial court did not improperly allow the state to amend the indictment through its notice of intent to use other-acts evidence; the state was permitted to present evidence of past events to establish a pattern of conduct and mental distress for menacing by stalking. Nor did the trial court err when it denied Hale's request for jury instructions on aggravated assault and voluntary manslaughter, inferior offenses of felonious assault, murder, and aggravated murder because (1) Hale's provocation was not caused by the victim, and (2) even if it was, Hale did not act with a sudden passion or fit of rage. The trial court also did not err when it admitted ten autopsy photos. Finally, the defendant's convictions were supported by sufficient evidence and not against the manifest weight of the evidence.

113082 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DARRYL JONES

Affirmed.

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

KEY WORDS: *Motion to dismiss; preindictment delay; actual prejudice; deceased witness; rape; R.C. 2907.02(A)(2); kidnapping; R.C. 2905.01(A)(4); sufficiency of the evidence; manifest weight of the evidence.*

Trial court did not err in denying defendant's motion to dismiss due to preindictment delay where defendant did not show that he sustained actual prejudice as a result of the preindictment delay. Considering each item of allegedly "lost" or "unavailable" evidence, including lost recording of 911 call, lost clothing, lost photographs and lost medical records, in light of other evidence available at the time of the indictment and the relevance of the allegedly unavailable evidence to the defense, defendant failed to show that the items, if available, would have meaningfully impacted his case. Speculation that deceased or missing witness could have had information favorable to defense likewise did not meet defendant's burden of showing actual prejudice.

Defendant's convictions for rape in violation of R.C. 2907.02(A)(2) and kidnapping in violation of R.C. 2905.01(A)(4) were supported by sufficient evidence and were not against the manifest weight of the evidence where victim testified that sex was not consensual, witnesses testified regarding the victim's injuries following the incident and the state presented DNA evidence from the victim's sexual-assault examination kits that linked defendant to the rape.

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113100 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v WILLIAM WOODS

Affirmed.

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

KEY WORDS: *Guilty plea; voluntary; pro se motion to continue; Crim.R. 11(C).*

The trial court did not err when it accepted Woods's guilty plea after it addressed the defendant personally at the plea hearing, engaged in the required colloquy with him, and fully complied with Crim.R. 11(C). The trial court did not have a duty to address a pro se motion for continuance that the defendant filed the day before pleading guilty.

113105 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALBERT FONTANEZ

Affirmed.

Eileen T. Gallagher, J., and Eileen A. Gallagher, P.J., concur; Michael John Ryan, J., dissents (with separate opinion).

KEY WORDS: *Guilty plea; motion to withdraw; change of heart. Denial of presentence motion to withdraw guilty plea affirmed where trial court failed to expressly state that a guilty plea constitutes a complete admission of guilt where the fact of the admission was obvious and the defendant failed to demonstrate prejudice.*

Denial of presentence motion to withdraw guilty plea was not an abuse of discretion where trial court considered all factors necessary for evaluating a plea withdrawal request under Crim.R. 32.1.

113131 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v GARY KEITH

Affirmed.

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

KEY WORDS: *R.C. 2929.14(C); R.C. 2907.05; gross sexual imposition; R.C. 2907.03; disseminating matter harmful to juveniles; maximum sentence.*

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(Case 113131 continued)

Appellant's maximum consecutive sentence totaling 30 months in prison for gross sexual imposition and disseminating matter harmful to juveniles was not contrary to law and appellant could not show that the record did not clearly and convincingly support the trial court's consecutive-sentence findings. There was no evidence of judicial bias or favoritism.

113183 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
WATER STREET CONDOMINIUM OWNERS' ASSOCIATION INC. v
TRAMPAS B. FERGUSON, ET AL.

Affirmed.

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

KEY WORDS: Motion to dismiss; condominium board election; quo warranto.

The core issue raised in the instant complaint is the validity of the election of Plaintiff Board and, as such, is to be determined in a quo warranto action. Because the complaint fails to raise a cause of action cognizable by the forum, we affirm the trial court's judgment dismissing the complaint for a lack of subject-matter jurisdiction.

113216 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BIOTRICITY, INC. v TIM DEJOHN, ET AL.

Reversed and remanded.

Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur; Michelle J. Sheehan, J., dissents (with separate opinion).

KEY WORDS: Federal Arbitration Act; arbitration agreement; motion for protective order; motion to stay discovery; motion to compel arbitration.

Trial court's denial of appellants' motions to stay discovery and for a protective order while appellants' motion to compel arbitration remained pending was immediately appealable under the Federal Arbitration Act, which applied to the arbitration agreements at issue, because the orders effectively denied appellants' motion to compel arbitration.

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113298 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
THRASHER DINSMORE & DOLAN, LPA v WILLIAM J. ROSS, ET AL.

Affirmed.

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

KEY WORDS: *Summary judgment; Civ.R. 56(C); unjust enrichment; unpaid attorney fees.*

Trial court properly granted summary judgment pursuant to Civ.R. 56(C) on plaintiff's unjust-enrichment claim for unpaid attorney fees regarding services plaintiff law firm rendered to defendants where there was no genuine issue of material fact that plaintiff provided legal services, defendants knew the plaintiff was providing legal services on its behalf, and it would be unjust for defendants to retain the benefit of those services without paying for them.