

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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December 12, 2024

112202 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALONZO KYLES

Affirmed.

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

KEY WORDS: *R.C. 959.131(C); sufficiency; manifest weight; serious physical harm; R.C. 959.131(A)(12).*

Judgment affirmed. The Ohio Supreme Court reversed our decision in State v. Kyles, 2023-Ohio-2691 (8th Dist.), and held that R.C. 959.131(C) protects all dogs and cats regardless of whether they are “kept,” including the cat in this case. We now address the defendant’s argument that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence because the State failed to prove “serious physical harm” during the bench trial. Based on the record before us, the trial court could reasonably conclude that the cat suffered serious physical harm from its exposure to bleach. Accordingly, we cannot say that this is the exceptional case where the evidence weighed heavily against the defendant’s conviction.

113178 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANDRE STEWART

Affirmed.

Emanuella D. Groves, P.J., Anita Laster Mays, J., and Frank Daniel Celebrezze, III, J., concur (with separate concurring opinion).

KEY WORDS: *Motion for continuance; abuse of discretion; motion to suppress; search warrant; inevitable-discovery exception.*

Judgment affirmed. The trial court did not abuse its discretion in denying the defendant’s motion to continue his trial. Nor did the trial court err in denying the defendant’s motion to suppress evidence where that evidence would have inevitably been discovered. Finally, we decline to find that the defendant received ineffective assistance of trial counsel. Based on the record before us, we cannot say that the defendant was prejudiced by trial counsel’s conduct during his direct examination of the defendant and closing arguments, regardless of whether that conduct amounted to deficient performance or mere unconventional trial tactics. Moreover, trial counsel did not perform deficiently when he did not move to suppress evidence or move for a mistrial based on the seizure of the defendant’s cell phone because there is no indication that the motion to suppress would have been granted or that a motion for mistrial probably would or should have been granted.

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113288 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
ESTATE OF DALE EDEN v ROBERT GOLDSTEIN, M.D., ET AL.

Dismissed.

Anita Laster Mays, J., Lisa B. Forbes, P.J., and Eileen T. Gallagher, J., concur.

KEY WORDS: *R.C. 2505.02, final appealable order.*

The appeal is dismissed for lack of jurisdiction. The orders appealed are not final appealable orders pursuant to R.C. 2505.02.

113428 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
SEAN QUELLOS, ET AL. v RONALD JOHNSON, ET AL.

Reversed and remanded.

Eileen T. Gallagher, J., Lisa B. Forbes, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment; savings statute; R.C. 2305.19; one-use restriction; substantially similar claims.*

Summary judgment reversed where plaintiffs' third complaint was not barred by the one-use restriction in the savings statute because the first two complaints were filed before the expiration of the applicable statutes of limitations and the third complaint was filed within one year of a dismissal otherwise than on the merits.

113533 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v AARON ADDISON

Affirmed.

Mary J. Boyle, J., Kathleen Ann Keough, A.J., and Emanuella D. Groves, J., concur.

KEY WORDS: *Motion for leave; motion for a new trial; Crim.R. 33(A)(6); Crim.R. 33(B); "unavoidably prevented"; newly discovered evidence; clear and convincing evidence; abuse of discretion; Crime Stoppers; Brady material; recantation; recusal; disqualification.*

Judgment affirmed. The trial court did not abuse its discretion when it denied appellant's motion for leave to file a motion for a new trial. Appellant failed to show by clear and convincing evidence that he was unavoidably prevented from discovering the information in a timely manner. Furthermore, the trial judge properly recused himself from the matter.

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113538 SHAKER HTS. MUNI. C Criminal Muni. & City
UNIVERSITY HEIGHTS v AHARON YECHIEL ROSSKAMM

Affirmed.

Lisa B. Forbes, P.J., Mary J. Boyle, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Crim.R. 19(D); Traf.R. 14(C); pro se; magistrate's decision; failure to object; speedy-trial calculation; motion to dismiss; illegal stop; plain-error analysis; no errors.*

Defendant-appellant failed to object to the magistrate's findings of fact and conclusions of law and, thereby, waived his objections to the court's decision on appeal besides plain error. Our review of the case does not find any errors occurred in the trial court. Appellant's two assignments of error are properly overruled.

113600 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v STEVEN HARRIS, SR.

Affirmed in part, reversed in part, and remanded.

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

KEY WORDS: *Motion to suppress; search and seizure; Fourth Amendment; probable cause; conceded error; consecutive sentences; findings; R.C. 2929.14(C)(4); allied offenses.*

Affirmed in part, reversed in part, and remanded. The trial court did not err by denying the motion to suppress based on the fact that the defendant failed to demonstrate that the evidence demonstrating probable cause from the sequence of events and observations presented in the affidavit supporting the search warrant was insufficient. Nevertheless, the sentences imposed on two of the drug-related counts are contrary to law based on the State's concession that those two offenses should have merged. And finally, the consecutive sentences on all counts are reversed based on the lack of findings under R.C. 2929.14(C)(4).

113618 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v VON HARRIS

Affirmed in part, vacated in part, and remanded.

William A. Klatt, J.,* Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

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(Case 113618 continued)

KEY WORDS: Entrapment; affirmative defense; jury instruction; predisposition; cell phone records; cell phone site location information (“CSLI”); plain error; Crim.R. 30; subpoena; effective assistance of counsel; Strickland test; sufficiency of the evidence; bribery, R.C. 2921.02(A); R.C. 2921.02(B); forgery; R.C. 2913.31(A)(1); R.C. 2913.31(A)(2); insurance fraud; R.C. 2913.47(B)(2); manifest weight of the evidence.

The trial court did not abuse its discretion when it declined to instruct the jury on the affirmative defense of entrapment where the evidence demonstrated the defendant’s predisposition to commit the charged offenses. Because the defendant held no privacy right in his mobile phone records, the trial court did not commit plain error when it admitted the records at trial. Defendant’s claim of ineffective assistance of counsel failed where he was unable to show his counsel’s performance was deficient or that the alleged deficient performance prejudiced him so as to deprive him of a fair trial.

Absent sufficient evidence on the charges of bribery in violation of R.C. 2921.02(B) - because the defendant was not a public servant at the time of the alleged offenses as required under the statute - the trial evidence did not support the bribery convictions. Defendant’s bribery convictions are vacated and the case is remanded on this limited issue. The State introduced sufficient evidence at trial to support the convictions of forgery and insurance fraud. Weighing all of the evidence, we cannot say this is one of the rare cases in which the trier of fact lost its way and, thus, the forgery and insurance fraud convictions were not against the manifest weight of the evidence.

113667 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JAKE SPENCER

Affirmed.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Sufficiency of evidence; drug trafficking; manifest weight of evidence; constructive possession; ineffective assistance of counsel.*

Evidence was sufficient to support defendant’s conviction for drug trafficking because there was sufficient evidence that he had constructive possession of the drugs and items related to drug trafficking found in properties he owned; defendant’s conviction for drug trafficking was not against the manifest weight of the evidence; defense counsel was not ineffective for not objecting to testimony that had a proper foundation and the State’s use of the defendant’s nickname at trial.

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113670 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
JEFFREY R. EFFINGER v ANTONIO NICHOLSON, ESQ., ET AL.

Affirmed.

Anita Laster Mays, J.; William A. Klatt, J.,* concurs (with separate opinion); Sean C. Gallagher, P.J., dissents (with separate opinion).

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: *Summary judgment; legal malpractice.*

The trial court did not err by granting the appellees' motion for summary judgment because the appellant did not provide a genuine issue of fact demonstrating that the appellees committed legal malpractice.

113745 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHERYL KANTOROWSKI v THE CITY OF SEVEN HILLS, OHIO

Affirmed.

Sean C. Gallagher, J., Mary J. Boyle, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Summary judgment; political subdivision; city; immunity; R.C. 2744.02(A)(1); proprietary function; maintain; repair; sewer system; detention basin; exception; R.C. 2744.02(B)(2); negligence; proximate cause; basement; property; storm; rain; water; flood; runoff.*

Affirmed the decision of the trial court that granted the motion for summary judgment of the City of Seven Hills, Ohio, upon finding the city was entitled to political-subdivision immunity. Appellant failed to produce evidence from which to show the city's alleged failure to maintain a detention basin in its sewer system was the proximate cause of the flooding to appellant's property. Because there was no evidence that the detention basin overflowed during the rain storm and flood event, appellant could not establish that the R.C. 2744.02(B)(2) exception to the general grant of immunity applied.

113827 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSE CARABALLO

Affirmed.

Lisa B. Forbes, J., Michelle J. Sheehan, P.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Robbery; theft; carjacking; ineffective assistance of*

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(Case 113827 continued)

counsel; failure to subpoena alibi witness; evidence outside the record.

The defendant argued on appeal that his trial counsel was ineffective for failing to subpoena a potential alibi witness. The defendant attached to his appellate brief this potential witness' affidavit. This evidence is not part of the trial court record. Whether to call a particular witness is trial strategy and will not be second-guessed on appeal. Furthermore, we cannot rely on evidence outside the record when reviewing arguments on appeal.

113828 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
YECKLEY ENTERPRISES, INC. v THE HUNTINGTON NATIONAL BANK

Affirmed.

Eileen A. Gallagher, P.J., Sean C. Gallagher, J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Civ.R. 56(C); breach of contract; negligence; damages; economic loss doctrine.

Trial court did not err in granting summary judgment in favor of defendant bank on plaintiff's breach-of-contract and negligence claims. Even assuming bank breached account agreement by changing the mailing address on plaintiff's accounts without its authorization, plaintiff did not demonstrate the existence of a genuine issue of material fact as to whether any damages it sustained as a result of cashing "bad checks" for a third party resulted from the bank's breach of the account agreement. Because plaintiff failed to allege any negligent conduct that was separate and independent from any alleged breach of contract, its negligence claim was barred by the economic loss doctrine.

113857 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ALVIN HOWELL, JR.

Affirmed.

William A. Klatt, J.,* Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Illegal conveyance into a detention facility; trafficking; possession; second-degree felony; sufficiency of the evidence; manifest weight of the evidence; random sampling method.

Appellant's convictions were supported by sufficient evidence and

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(Case 113857 continued)

were not against the manifest weight of the evidence where a forensic scientist testified that he used the random sampling method to test one representative pill and determine that the seized pills contained 11.4 grams of fentanyl.

113869 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ASIA WYLEY

113870 CLEVELAND MUNI. C Criminal Muni. & City
CITY OF CLEVELAND v ASIA WYLEY

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Criminal trespass; Cleveland Cod.Ord. 623.04; sufficiency; hotel; bar; notified; refused to leave.

Affirmed appellant's conviction for criminal trespass in violation of Cleveland Cod.Ord. 623.04. Sufficient evidence was presented demonstrating that appellant knowingly remained on the hotel premises and refused to leave after being told to leave by hotel staff and the police

113919 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
MYRON A. GRACE v GEICO INSURANCE, CORPORATE OFFICE

Affirmed.

William A. Klatt, J.,* Eileen A. Gallagher, P.J., and Sean C. Gallagher, J., concur.

(*Sitting by assignment: William A. Klatt, J., retired, of the Tenth District Court of Appeals.)

KEY WORDS: Pro se; failure to challenge judgment of the trial court.

Plaintiff-appellant appealed the trial court's order that granted defendant-appellee's motion to dismiss. However, on appeal, plaintiff-appellant argued the trial court erred in granting defendant-appellee's request to compel arbitration. A review of the record shows arbitration was never addressed by the trial court. Because plaintiff-appellant does not challenge the motion to dismiss, he has failed to demonstrate any error by the trial court.

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113960 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: T.C., ET AL.

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Anita Laster Mays, J., concur.

KEY WORDS: *Consolidated appeal; termination of parental rights; best interest of the child; R.C. 2151.414(B)(1)(a)-(e); R.C. 2151.414(D)(1)(a)-(e); best-interest factors; R.C. 2151.414(E); manifest weight; clear and convincing evidence; violation of due process; R.C. 2151.419; R.C. 2151.413; motion to modify temporary custody to permanent custody.*

Juvenile court did not err when it terminated Mother's parental rights and granted permanent custody to the Cuyahoga County Division of Children and Family Services. There was clear and convincing evidence that the custody award was not against the manifest weight of the evidence and was in the best interest of the children. The juvenile court did not violate Mother's due process rights.

114036 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
IN RE: T.C.

114037 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
IN RE: Z.B.

Affirmed.

Anita Laster Mays, J., Lisa B. Forbes, P.J., and Emanuella D. Groves, J., concur.

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

The trial court's grant of permanent custody of the children to the agency is supported by competent, credible evidence and by the manifest weight of the evidence.

114092 PROBATE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
ROBERT L. PAUL, NEXT OF KIN JANIS L. PAUL, WARD v DOROTHEA J. KINGSBURY

Affirmed.

Sean C. Gallagher, J., Eileen A. Gallagher, P.J., and William A. Klatt, J.,* concur.

(*Sitting by assignment: William A. Klatt, J., retired of the Tenth District Court of Appeals.)

KEY WORDS: *Standing; Civ.R. 17; real party; substitute.*

Affirmed. *Plaintiff-appellant next of kin of a family member who was declared a ward of the probate court lacked standing to bring claims on behalf of that family member and cannot cure that lack of standing through amending the complaint to substitute the guardian and trustee as the real party plaintiff.*

114173	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MILES A. BRANDON			

Vacated and remanded.

Michael John Ryan, J., Kathleen Ann Keough, A.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Loc.App.R. 16(B); conceded error; jurisdiction; final order.*

In this conceded error case, the trial court did not have the authority to enter an order imposing financial sanctions on appellant when it had already entered an order terminating probation and recalling the capias issued for the appellant. The order terminating appellant's probation and recalling the capias was a final order.