

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

Page: 1 of 9

February 8, 2024

112143	COMMON PLEAS COURT STATE OF OHIO v JAMES DIAMOND	A	Criminal C.P.
112144	COMMON PLEAS COURT STATE OF OHIO v JAMES DIAMOND	A	Criminal C.P.
112145	COMMON PLEAS COURT STATE OF OHIO v JAMES DIAMOND	A	Criminal C.P.
112438	COMMON PLEAS COURT STATE OF OHIO v JAMES DIAMOND	A	Criminal C.P.

Affirmed in part, reversed in part and remanded in part.

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

KEY WORDS: *Reagan Tokes Law; indefinite sentences; R.C. 2929.14(A)(2)(a); R.C. 2929.144(B); constitutional; separation-of-powers doctrine; due process; right to a jury trial; R.C. 2929.14(C)(4); consecutive-sentence findings; clearly and convincingly unsupported by the record.*

Trial court erred in failing to impose indefinite sentences on qualifying second-degree felonies that were subject to the Reagan Tokes Law. Defendant did not present any novel issues or new theory challenging the constitutional validity of any aspect of the Reagan Tokes Law left unaddressed by the Ohio Supreme Court's decision in State v. Hacker, Slip Opinion No. 2023-Ohio-2535. The record did not clearly and convincingly fail to support the trial court's findings in support of the imposition of consecutive sentences.

112278	CLEVELAND HTS. MUNI. CITY OF CLEVELAND HEIGHTS v DEREK JACKSON	C	Criminal Muni. & City
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Affirmed.

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

KEY WORDS: *Operating vehicle under the influence; impeding or blocking traffic; sufficiency of the evidence; weight of the evidence.*

Affirmed. The defendant's convictions for the OVI and impeding or blocking traffic offenses were supported by sufficient evidence and not against the weight of that evidence based on the trial evidence demonstrating that the defendant (1) fell asleep while stopped at a traffic intersection, thereby blocking police officers from proceeding through the intersection in their lane of travel, and (2) was intoxicated.

CASE DECISION LIST

112380 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MILTON GEORGE, IV

Reversed and remanded.

Michelle J. Sheehan, J., and Anita Laster Mays, P.J., concur; Lisa B. Forbes, J., concurs in part and dissents in part (with separate opinion attached).

KEY WORDS: *Rape; GSI; sufficiency; jury instruction; stepfather; force; alternative definition of force; sexual battery.*

It is undisputed appellant engaged in sexual activities with 18-year-old M.B., whose mother and appellant were married for six years, and the issue at trial was whether the state proved the element of force to sustain convictions for rape and gross sexual imposition. While M.B.'s testimony might have indicated some degree of physical force was used by appellant, the trial court instructed the jury that the element of force can also be proven by evidence that the victim's will was overcome by fear or duress alone. The jury instruction was given in error because the alternative definition of force does not apply to an adult child pursuant to Supreme Court of Ohio precedent. The erroneous jury instruction was prejudicial and deprived appellant of a fair trial because it allowed the jury to convict appellant with less evidence for force, especially where the victim's testimony was equivocal on the issue in this case. Appellant's conviction of rape and GSI are therefore reversed and the case is remanded for a new trial.

Furthermore, appellant's conviction of sexual battery under R.C. 2907.03(A)(5), Ohio's incest statute, is reversed due to insufficient evidence because the stepfather-stepchild relationship had dissolved as a result of appellant's divorce from M.B.'s mother.

112425 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v OCTAVIUS WILLIAMS

Reversed, vacated, and remanded.

Lisa B. Forbes, J., and Eileen T. Gallagher, J., concur; Kathleen Ann Keough, A.J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Motion for new trial; Fifth Amendment right against self-incrimination; confession; attempted murder; Crim.R. 33(A)(6); newly discovered evidence.*

Trial court's denial of defendant's motion for new trial is reversed. The defendant was convicted of attempted murder. Subsequently, the defendant's brother confessed to shooting the victim, in writing and orally during an interview with attorneys from the prosecutor office's conviction-integrity unit. The confessions are consistent with evidence presented at trial. These confessions amount to

CASE DECISION LIST

(Case 112425 continued)

newly discovered evidence, and the court erred by denying the defendant's motion for a new trial.

112473	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v MARCUS KIRKS			

Affirmed.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Material witness warrant; R.C. 2937.106 through 2937.18; R.C. 2941.48; probable cause; standing of defendant; ineffective assistance of counsel; failure to object; cell phone mapping; lay witness; tactical decision; manifest weight of the evidence; circumstantial evidence.*

The trial court did not err in ordering the material witness warrant, and appellant did not receive ineffective assistance of counsel. Appellant's convictions were not against the manifest weight of the evidence.

112579	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v LAMARION WOODS			

112580	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v LAMARION WOODS			

Affirmed in part; vacated in part; and remanded.

Eileen T. Gallagher, P.J., Mary J. Boyle, J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Joinder; Crim.R. 8(A); photographs; authentication; Evid.R. 901(A); motion to suppress; voir dire; challenge for cause; impeachment; expert testimony; personal knowledge; Daubert; Evid.R. 702; Evid.R. 703; ballistics evidence; sufficiency; manifest weight; aggravated murder; murder; felonious assault; criminal damaging; carrying a concealed weapon; ineffective assistance of counsel; age as a sentencing factor.*

Trial court acted within its discretion in joining two cases arising from two separate incidents where the offenses were committed at different locations on different dates and were, therefore, simple and direct.

Photographs from crime scene were properly authenticated by an officer who supervised the investigation.

Motion to suppress was properly denied where there was no evidence that the search warrant affidavit contained untruthful

(Case 112580 continued)

statements.

Denial of motion to excuse juror for cause due to anti-gun sentiments was not an abuse of discretion where the juror stated that she could keep an open mind, would hold the government to its burden of proof, and would listen to the evidence objectively.

Trial court acted within its discretion in limiting the scope of cross-examination where defense counsel repeatedly asked objectionable questions and ultimately admitted at side bar that there was no evidence the witness had been reprimanded for dishonesty.

Ballistics expert was qualified to testify regarding ballistics testing even though he did not perform the testing himself because he reviewed the examiner's work and had personal knowledge of the testing.

Trial court properly admitted ballistic evidence indicating that shell casings found at multiple crime scenes were discharged from the same gun where the methodology used for the ballistics testing had been accepted by multiple courts as meeting the standards outlined in Daubert for admission of scientific evidence.

There was sufficient evidence to support defendant's felonious assault and criminal damaging convictions where surveillance video showed the defendant shooting at the victim in a parking lot where cars were damaged by bullets.

There was sufficient evidence to support defendant's carrying a concealed weapon conviction where surveillance video showed the defendant walking around the store without the firearm visible but later use the gun to shoot at the victim.

There was sufficient evidence to support defendant's aggravated murder, murder, and felonious assault convictions where surveillance video showed the defendant and his associate waiting for victim's car to arrive and showed the defendant shoot at the victim's car almost immediately upon its arrival.

Defendant was not denied his right to the effective assistance of counsel even though counsel opened the door to gang affiliation because there was no evidence that the defendant belonged to a gang and the question was intended to show that other young men frequented the gas station where the murder occurred and could be the real culprits.

Defendant was not denied his right to the effective assistance of counsel for failing to use a peremptory challenge, failing to challenge the qualifications of the state's ballistics expert, or in failing to challenge the reliability of the ballistics methodology because any objections on these grounds would have been properly overruled.

CASE DECISION LIST

(Case 112580 continued)

The trial court erred in failing to consider defendant's age as a mitigating factor.

Defendant failed to show he was prejudiced by cumulative errors.

112583 BOARD OF TAX APPEALS H Admin Appeal
LAKE COVE APARTMENTS LLC, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

112584 BOARD OF TAX APPEALS H Admin Appeal
ALEXANDER APARTMENTS, LLC, ET AL. v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Affirmed.

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

KEY WORDS: Board of Tax Appeals; reduction; property value; personal property.

Appellants failed to satisfy their burden of proving by competent and probative evidence their right to decrease the value of real properties because of a transfer of personal property included in a prior sale. The BTA's determination was neither unreasonable nor unlawful.

112588 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LEENEJA SINGLETON

Affirmed.

Mary Eileen Kilbane, P.J., Lisa B. Forbes, J., and Emanuella D. Groves, J., concur.

KEY WORDS: Felonious assault; manifest weight of the evidence; ineffective assistance of counsel; cumulative error.

Appellant's convictions were not against the manifest weight of the evidence where witness testimony contained minor inconsistencies. Appellant did not receive ineffective assistance of counsel. Cumulative error did not deprive appellant of a fair trial.

112610 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ANTHONY BOYCE

Affirmed.

Eileen T. Gallagher, P.J., and Michael John Ryan, J., concur; Emanuella D. Groves, J., dissents (with

CASE DECISION LIST

separate opinion).

KEY WORDS: *Confrontation clause; ongoing emergency; past event.*

Trial court's admission of caller's statements in 911 call did not violate the Confrontation Clause because the statements related to an ongoing emergency.

112651 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
BRYAN COSTIN v MIDWEST VISION PARTNERS, LLC., ET AL.

Affirmed.

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

KEY WORDS: *Modification; contract; arbitration, de novo; compel; stay; discovery; intent; unambiguous.*

In the absence of a valid and enforceable arbitration agreement, the trial court did not err in denying the defendants' motion to compel arbitration and stay proceedings without an evidentiary hearing or a trial.

112749 GARFIELD HTS. MUNI. G Civil Muni. & City
DOUG WOODS v SHARAE FLEMINGS

Affirmed and remanded.

Frank Daniel Celebrezze, III, J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Bench trial; eviction; damages; motion for sanctions; untimely filing of trial brief; abuse of discretion; continuance; inherent authority to manage proceedings; supervisory control of docket; manifest weight of the evidence; competent, credible evidence; bias; cumulative error.*

The trial court did not err in denying appellant's motion for sanctions and continuing the trial. The trial court also did not err in declining to award appellant late fees, loss of rental income, back rent, water and sewer fees, and damages beyond those related to the window blinds and the flooring, or in its award of the remainder of the security deposit to appellee. The trial court's verdict was not against the manifest weight of the evidence, appellant has not demonstrated bias, and there was no cumulative error.

CASE DECISION LIST

112780 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v KARLISA WHITTAKER

Affirmed.

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

KEY WORDS: *Improperly furnishing firearm to a minor; R.C. 2923.21(A)(3); sufficiency of the evidence; manifest weight of the evidence.*

Appellant's conviction for improperly furnishing a handgun to a minor was supported by sufficient evidence and was not against the manifest weight of the evidence. Evidence at trial established that appellant told police officers that she had given her handgun to her 18-year-old son to protect himself because the area was dangerous and he was being bullied. While appellant and her son testified that she had not given him the firearm and that he had retrieved it from her safe, the factfinder was in the best position to determine the witnesses' credibility.

Judgment affirmed.

112785 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOHN COBB, JR.

Affirmed in part, sentence vacated in part, and remanded.

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

KEY WORDS: *Trafficking; possession; R.C. 2925.03(A)(2); R.C. 2925.11(A); drugs; manifest weight; chain of custody; reliable; sufficiency; complicity; jury instruction; allied offenses; R.C. 2941.25.*

Appellant's convictions for trafficking and drug possession were supported by sufficient evidence and were not against the manifest weight of the evidence. The testimony effectively established a proper chain of custody and the reliability of the testing process and results. Circumstantial evidence established appellant not only possessed the drugs but trafficked them and was complicit with his codefendant. The trial court did not err in providing a jury instruction on complicity. The trial court committed plain error in failing to merge appellant's convictions for trafficking and drug possession as to the same drug as allied offenses of similar import pursuant to R.C. 2941.25.

CASE DECISION LIST

112809 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v DAMIEN E. LOVELESS

Affirmed.

Frank Daniel Celebrezze, III, J., Kathleen Ann Keough, A.J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Reagan Tokes Law; constitutionality.*

The Reagan Tokes Law is constitutional, and appellant was properly sentenced thereunder. The decision of the trial court is affirmed.

112829 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MOHAMED SHAHIN

Reversed and remanded.

Michael John Ryan, J., Eileen T. Gallagher, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Court's dismissal of case with prejudice; lack of statutory or constitutional violation that would bar further prosecution; plain error; prosecutorial vindictiveness; ripeness.*

Judgment reversed. The trial court's dismissal with prejudice of the state's case was plain error because there was no statutory or constitutional violation that would bar further prosecution. The defendant's claim of vindictive prosecution was not ripe because, at the time of the dismissal, no new charges had been filed.

112853 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v SHERMAN ROBINSON

Reversed and vacated.

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

KEY WORDS: *Gross sexual imposition; R.C. 2907.05(A)(4); sufficiency of evidence; touching bottom.*

Where the alleged victim repeatedly and unequivocally testified at trial that defendant never touched her "butt" or "bottom" when he ran his hand up her leg and no other witness observed the touching, there was insufficient evidence to support defendant's conviction for gross sexual imposition based on his touching the alleged victim's "bottom" as charged.

CASE DECISION LIST

112946 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE I.L.J.

Reversed and remanded.

Frank Daniel Celebrezze, III, J., Eileen T. Gallagher, P.J., and Mary J. Boyle, J., concur.

KEY WORDS: *Guardian ad litem; fees; motion for fees; Loc.Juv.R. 15(D)(5).*

Judgment reversed and remanded. The trial court erred in prematurely granting the guardian ad litem's motion for fees without a hearing before 14 days elapsed pursuant to Loc.Juv.R. 15(D)(5).

113056 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: JA.B., ET AL.

113087 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate
IN RE: JA.B., ET AL.

Affirmed.

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

KEY WORDS: *Permanent custody; legal custody; extension of temporary custody.*

Judgment affirmed. The weight of the evidence supports the trial court's finding that clear and convincing evidence demonstrates that (1) the children cannot be placed with either of their parents within a reasonable time or should not be placed with either of their parents; (2) reasonable efforts were made to prevent the children's removal and for reunification; and (3) permanent custody to the agency would be in the children's best interest.

In consideration of all the best interest factors, along with the GAL's opinion that permanent custody to the agency would be in the children's best interest, a preponderance of the evidence supports the trial court's denial of alleged Father's request for legal custody to one of two paternal aunts.

The trial court did not abuse its discretion by not extending the temporary custody order. The children were approximately 16 months old at the time of trial and Mother and alleged Father had not made significant progress on their case plans. The children had been with their foster family since birth and were bonded to them and doing well. The record demonstrates that permanent custody was in the children's best interest.