

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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January 18, 2024

111994 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOVAN KELLEY

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

Michael John Ryan, J., and Kathleen Ann Keough, A.J., concur; Emanuella D. Groves, J., concurs in part and dissents in part (with separate opinion).

KEY WORDS: *Gross sexual imposition; rape; mental health records; amendment to indictment; Crim.R. 29; manifest weight of the evidence; ineffective assistance of counsel; leading questions; sexually violent predator specifications; postrelease control.*

The trial court did not abuse its discretion by denying the defendant's motion to compel the victim's privileged mental health records. The state did not have the records in its possession, the treatment was sought because of the victim's suicidal ideation and not because of the sexual assaults, and the defendant failed to make a showing that they contained any material or exculpatory evidence.

The evidence was sufficient to support the gross sexual imposition and rape convictions. Further, the weight of the evidence supported the convictions.

Trial counsel was not ineffective for failing to object to the state's use of leading questions with the child victims. It is well established that trial courts have discretion in allowing leading questions with children who are victims of sexual offenses.

The trial court did not abuse its discretion by allowing the state to amend the indictment. The amendments did not change the name or the identity of the offenses.

The defendant's failure to object to the trial court's judgment on the sexually violent predator specifications constitutes a waiver of the issue on appeal. Nonetheless, the specifications were supported by sufficient evidence as based on the trial testimony.

112172 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v ARMOND JOHNSON

Affirmed.

Kathleen Ann Keough, A.J., Eileen A. Gallagher, J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Quadruple homicide; sufficient evidence; arson; gunshot; Evid.R. 404(B); domestic abuse; text messages; autopsy photographs; DNA; blood; Evid.R. 703; shoes; Evid.R. 701;*

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gasoline; Reagan Tokes.

Defendant's convictions upheld where state presented sufficient evidence by means of DNA and cell phone evidence, that the defendant shot and killed his ex-fiance, the mother of his child, and an innocent-bystander neighbor, and then set fire to the home killing his child and another child. Evid.R. 404(B) other acts of prior domestic abuse was properly admitted to show a strained relationship between the defendant and his ex-fiance, and to prove identity of the killer. No abuse of discretion in admitting select autopsy photographs of each victim because they permitted the jury to understand the state's theory of the case. Trial court properly permitted DNA expert to opine based on the DNA mixtures and percentages, that defendant wore the jeans that contained the female victim's blood. Opinion testimony from the officers that the shoes worn by the person of interest in home-surveillance videos looked like the shoes recovered from defendant's home was admissible. The shoes contained both gasoline, the accelerant used to set the fire, and the female victim's blood.

112417 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
THE FAHEY BANKING COMPANY v GRADY AND ASSOCIATES, ET AL.

Affirmed.

Mary J. Boyle, J., Anita Laster Mays, P.J., and Michelle J. Sheehan, J., concur.

KEY WORDS: *Motion for summary judgment; legal malpractice; expert testimony; disgorgement.*

Due to the complexities of the claims, allegations, and legal issues raised in the plaintiff-appellant's legal-malpractice case, the plaintiff-appellant was required to produce expert testimony to establish that its attorneys breached the requisite standard of care. The plaintiff-appellant's allegations of malpractice against its attorneys contemplate the communications, strategies, and tactical decisions involved in resisting a change in control and structuring, drafting, and negotiating contracts and compensation agreements for various bank executives. The evaluation of such matters, especially in the context of the banking and regulatory industry, is not within the general experience or knowledge of a layperson. Because the plaintiff-appellant failed to present expert testimony, the trial court properly found that no genuine issues of material fact remained and granted summary judgment in favor of its attorneys. Summary judgment was also proper as to the plaintiff-appellant's disgorgement claim since disgorgement is a remedy for a claim and not a claim for relief under Ohio law.

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112448 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DOROTHY SHELL v OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

Reversed.

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

KEY WORDS: *R.C. 5101.35 administrative appeal; due deference; Medicaid benefits; Ohio Adm.Code 5160:1-3-05.1 resource limit; countable resources; life insurance policy; Ohio Adm.Code 5101:6-2-03, notice; statutory interpretation; reasonable efforts exclusion.*

In an administrative appeal, the trial court erred in finding that ODJFS's decision to deny Medicaid benefits to appellant was supported by reliable, probative, and substantial evidence.

Courts are not required to give "due deference" to administrative agencies. An agency interpretation is simply one consideration a court may sometimes take into account in rendering the court's own independent judgment as to what the law is.

Appellant received defective notice of the denial of her claim for Medicaid benefits because the notice did not properly notify her of the reason she was denied. The notice did not give appellant any indication which of her resources put her over the resource limit and cited an existing administrative code section that did not exist at the time appellant filed for benefits.

The reasonable-efforts exclusion in former Ohio Adm.Code 5160:1-3-05.1(C)(6) does not cover personal property and does not apply in this case.

Appellant did not have the ability to access the cash surrender value of her life insurance policies because she had executed an irrevocable assignment of the policies to a funeral home.

Under Ohio Medicare law, an irrevocable assignment of a life insurance policy means that the policy is excluded as a countable resource. Therefore, the life insurance policies were not countable resources and appellant was under the resource limit.

112547 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JASON D. BEARD

Affirmed.

Michelle J. Sheehan, J., Anita Laster Mays, P.J., and Sean C. Gallagher J., concur.

KEY WORDS: *Aggravated vehicular homicide; R.C. 2903.06(a)(2); recklessness; R.C. 2901.22(c); jury instructions; abuse of*

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discretion; sufficiency of evidence; manifest weight of the evidence.

Defendant drove dump truck from work site toward highway with a raised bed and hit overhead support and sign. Sign and its support then hit pick-up truck travelling on highway, killing the driver. Defendant was convicted of aggravated vehicular homicide in violation of R.C. 2903.06(A)(2) for driving recklessly and causing the death of another.

Trial court instructed jury in conformity with Ohio Jury Instructions, CR Section 417.17 (2023) and R.C. 2901.22 and declined to give further instruction on negligence and recklessness as requested by defendant. Because the instructions given were a correct statement of the law and were not incomplete, the trial court did not abuse its discretion. Evidence at trial was sufficient to sustain conviction and not against the manifest weight where the state presented evidence that defendant was aware of the risk of driving the dump truck with the bed raised, the dump truck and its warning lights regarding the raised bed were fully functional, and defendant was running late, did not use a spotter, and had headphones on when he was driving towards the highway.

112806 JUVENILE COURT DIVISION F Civil C.P.-Juv, Dom, Probate

IN RE: D.S.

Dismissed.

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

KEY WORDS: Final appealable order; disposition; R.C. 2505.02.

A juvenile court must provide a disposition for each offense for which a child is adjudicated delinquent. The juvenile court was required to issue a disposition for all counts, even a misdemeanor count to create a final order that disposes of the matter and renders the findings appealable. Having failed to render a disposition as to Count 8, the appeal must be dismissed.