

CASE DECISION LIST

Court of Appeals, Eighth Appellate District

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July 25, 2024

112434 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY v JOSE GARCIA, ET AL.

Affirmed.

Lisa B. Forbes, J., Kathleen Ann Keough, A.J., and Anita Laster Mays, J., concur.

KEY WORDS: *Summary judgment; Civ.R. 56; declaratory judgment; auto insurance policy; duty to defend; duty to indemnify; liability coverage; shooting from vehicle; interpretation of auto insurance policy; definition of insured; ownership, maintenance or use; instrumentality of harm; clearly and indisputably outside policy coverage.*

Trial court did not err in granting insurer's motion for summary judgment and denying appellant insured's motion for partial summary judgment on complaint seeking a declaratory judgment that insurer owed appellant no duty under auto insurance policy to defend or indemnify appellant against claims asserted against him in wrongful death action that arose from appellant's shooting victim while appellant was in the driver's seat of his vehicle.

Claims asserted against appellant in the wrongful death action were clearly and indisputably outside policy coverage. Appellant was an insured under the policy for the ownership, maintenance, or use of his vehicle. The instrumentality that caused the harm was appellant's gun - not his vehicle. Likewise, the conduct that caused the harm was appellant shooting the victim with his gun - not appellant's ownership, maintenance, or use of his vehicle. Based on the plain terms of the policy at issue, the vehicle must be more than the mere situs of the injury-causing event.

112566 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
ARLENE L. PIZARRO-ALLEN v LEON L. ALLEN

Dismissed.

Emanuella D. Groves, J., Lisa B. Forbes, P.J., and Michael John Ryan, J., concur.

KEY WORDS: *Sale of marital property; pending foreclosure; moot.*

Appellant's appeal challenging the trial court order granting a motion to sell marital property in a divorce proceeding was moot where the property was subject to a separate foreclosure action, the foreclosure was granted and the property sold.

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112793 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
CHRISTINA CAMACHO v ROSE-MARY, JOHANNA GRASSELLI REHABILITATION, ET AL.

Affirmed.

Lisa B. Forbes, P.J., Emanuella D. Groves, J., and Sean C. Gallagher, J., concur.

KEY WORDS: *Discovery; Civ.R. 26(B); privilege; physician-patient privilege; R.C. 2317.02; protected health information; records of third parties; de novo review; Health Insurance Portability and Accountability Act; HIPAA; 45 C.F.R. 160.103; R.C. Ch. 3798; covered entity; “de-identified health information”; 45 C.F.R. 164.502(d); privilege log.*

Trial court’s decision granting motion to compel responses to discovery requests that sought information about allegations of abuse and administrative emails about staffing levels at residential facilities operated by appellants was affirmed where appellants did not establish that a privilege applied and failed to comply with Civ.R. 26(B) by producing a privilege log or sufficiently describing responsive documents.

112799 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v RICKEY M. BRIGHT

Affirmed and remanded.

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

KEY WORDS: *Ineffective assistance; plain error; Crim.R. 52(B); expert testimony; lay testimony; Evid.R. 701; Evid.R. 702; Crim.R. 16(K); expert reports; SANE nurse; social worker; DNA analyst; competency of a witness; Evid.R. 601; R.C. 2317.01; prosecutorial misconduct; cumulative error; sufficiency; manifest weight; life sentence; nunc pro tunc.*

We conclude that Bright’s defense counsel was not deficient, and that the trial court did not commit plain error. Further, his convictions were not against the sufficiency or manifest weight of the evidence. Therefore, Bright’s convictions are affirmed. However, we remand the matter to the trial court to correct its sentencing entry nunc pro tunc.

112931 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v TERENCE GREENE

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Affirmed in part, vacated in part and remanded.

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

KEY WORDS: *Rape; sexual battery; felonious assault; kidnapping; gross sexual imposition; disseminating matter harmful to juveniles; plain error; prejudicial statements to jury; victims; burden of proof; beyond a reasonable doubt; allied offenses; merger; jury instructions; ineffective assistance of counsel.*

It was plain error for the trial court to have imposed sentence on certain kidnapping and sex offenses where those were clearly allied offenses of similar import. Sentences vacated and case remanded for resentencing. The remaining kidnapping convictions should not merge. The defendant's convictions were not against the manifest weight of the evidence.

It was inadvisable for the trial court to attempt to expand upon the statutory definition of "reasonable doubt" in its jury instructions but the defendant did not show prejudicial error when considering the instructions as a whole. There was substantial, credible evidence presented of the defendant's guilt and the trial court simply attempted to illustrate, by way of an example, what might constitute an important life decision and what proof might amount to proof beyond a reasonable doubt under those circumstances.

The trial court's passing reference to the alleged victims as the "victims" during voir dire was not prejudicial. The prosecutor's reference to the alleged victims as the "victims" during trial is also not a basis to order a new trial.

Where the defendant presented a complete defense, denying all sexual interactions with the alleged victims, it was not plain error for the trial court to decide not to instruct the jury on the elements of sexual battery as a lesser included offense. Trial counsel was not ineffective for failing to request such an instruction, as that was clearly a tactical decision.

113255 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JEROME WHITE

Affirmed.

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

KEY WORDS: *Reagan Tokes Law; due process; sentencing agreement; waive.*

Defendant's sentence, imposed under the Reagan Tokes Law, is constitutional.

Defendant waived his right to challenge the denial of his motion to withdraw his guilty pleas in exchange for a favorable sentence.

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113264 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
KATHLEEN KEYSE v CLEVELAND CLINIC FOUNDATION

Affirmed.

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

KEY WORDS: *Biddle claim; unauthorized disclosure; third party; summary judgment; motions in limine.*

A Biddle claim requires proof of the unauthorized, unprivileged disclosure to a third party of nonpublic medical information that a physician or hospital has learned within a physician-patient relationship; the trial court did not err in granting summary judgment to defendant hospital on plaintiff's Biddle claim where there was no evidence that the defendant had intentionally or unintentionally disclosed plaintiff's medical information to anyone; rather, the evidence was clear that plaintiff's sister, who was an employee of defendant hospital, had accessed plaintiff's medical information without authorization to do so; any argument regarding the trial court's granting of appellee's pre-trial motions in limine was rendered moot in light of appellate court's judgment affirming the trial court's grant of summary judgment to appellee.

113295 DOMESTIC RELATIONS F Civil C.P.-Juv, Dom, Probate
E.A. v A.A.

Affirmed.

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

KEY WORDS: *Domestic violence; protection order; future harm; conviction; no contact; objections; grant; sufficiency and manifest weight; credibility; relevancy.*

The trial court did not abuse its discretion in granting the respondent a DVCPO or by granting the respondent's objections to the original order. The trial court's judgment was supported by competent and credible evidence.

113320 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v LUIS VEGA-MEDINA

Affirmed in part; vacated in part; and remanded.

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

KEY WORDS: *Manifest weight; kidnapping; abduction; force; threat*

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(Case 113320 continued)

of force; ineffective assistance of counsel; violent-offender designation; sentence; R.C. 2929.11; findings; contrary to law.

Defendant's kidnapping and abduction convictions were not against the manifest weight of the evidence where competent, credible evidence showed that defendant's conduct paralyzed the victim with fear and rendered her incapable of escape.

Trial counsel was not ineffective even though he did not impeach the victim on two inconsistencies between her statements to police and her trial testimony because the inconsistencies involved were minor and did not involve facts material to the defendant's conduct and the evidence overwhelmingly supported the defendant's convictions.

The trial court failed to properly designate the defendant as a violent offender because the court failed to comply with the procedure outlined in the violent-offender statute and it was not clear whether the defendant understood his violent-offender duties.

Defendant's sentences were not contrary to law where his sentences were within the applicable statutory ranges and the court complied with the purposes and principles of sentencing outlined in R.C. 2929.11.

113348 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v MARCUS BASTAWROS

Affirmed.

Sean C. Gallagher, J., Mary Eileen Kilbane, P.J., and Anita Laster Mays, J., concur.

KEY WORDS: Drug possession; attempt; conditions of community-control sanctions; judicial bias; R.C. 2701.03; affidavit of disqualification.

Affirmed. The trial court did not err by imposing the sale of the defendant's home as a condition of the community-control sanctions imposed since the sale related to the criminal conduct underlying the offenses as charged and appellate courts lack jurisdiction to consider allegations of bias advanced against the trial judge because those challenges must be advanced through R.C. Ch. 2701 and an affidavit of disqualification filed with the Ohio Supreme Court.

113450 COMMON PLEAS COURT E Civil C.P.-Not Juv,Dom Or Prob
DWAYNE PRYOR v ST. COLMAN & AFFILIATES FEDERAL CREDIT UNION

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Affirmed.

Michael John Ryan, J., Mary J. Boyle, P.J., and Frank Daniel Celebrezze, III, J., concur.

KEY WORDS: *Motion for default judgment; Civ.R. 12(B)(6) motion to dismiss for failure to state a claim; Civ. R. 8(A).*

Judgment affirmed. Pro se appellant's complaint did not comport with Civ.R. 8(A) when the claim that he is entitled to relief under the theory of quantum meruit is a legal conclusion that he did not support by citing to any statutes, case law, or facts. Trial court properly denied appellant's motion for default judgment because appellee responded to the complaint with a motion to dismiss and therefore answered the complaint in accordance with Civ.R. 12.

113455	COMMON PLEAS COURT	A	Criminal C.P.
STATE OF OHIO v TAWANN SMITH			

Affirmed.

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

KEY WORDS: *Felonious assault; self-defense; weight of the evidence.*

The defendant's conviction for felonious assault, including two separate firearm specifications, is affirmed because it is not against the weight of the evidence presented at the jury trial.

113465	COMMON PLEAS COURT	E	Civil C.P.-Not Juv,Dom Or Prob
KILLIAN FISCHER, ET AL. v MONARCH VAN LINES LLC, ET AL.			

Affirmed.

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

KEY WORDS: *Personal jurisdiction; minimum contacts.*

The trial court did not err in dismissing because the plaintiffs did not establish at trial that the out-of-state defendants had the requisite contacts with Ohio for the purposes of establishing the trial court's jurisdiction over the action.

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113481 COMMON PLEAS COURT A Criminal C.P.
STATE OF OHIO v JOSE PIZZARO

Affirmed.

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

KEY WORDS: *Language; interpreter; Crim.R. 11; R.C. 2311.14; Sup.R. 88; plea hearing; knowing; intelligent; voluntary; colloquy.*

The trial court did not err by failing to appoint an interpreter during the plea proceedings. Defendant's guilty pleas were knowingly, intelligently, and voluntarily made.

113500 BOARD OF TAX APPEALS H Admin Appeal
STAG INDUSTRIAL HOLDINGS, LLC v CUYAHOGA COUNTY BOARD OF REVISION, ET AL.

Reversed and remanded.

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

KEY WORDS: *Tax; real property; value; board of revision; board of tax appeals; arm's-length sale; market value; increase; allocation; land; improvements; land value; building value; fiscal officer; auditor; independent judgment; reasonable and lawful; burden; record; lack of evidence; support; reversed; remanded; modify.*

Reversed and remanded decision of the Board of Tax Appeals ("BTA") to affirm the Cuyahoga County Board of Revision's ("BOR's") allocation of a property's total value between land and improvements for the relevant tax year. The BTA's decision regarding the allocation was unreasonable and unlawful when there was no evidence in the record to support the BOR's increase in the land value or from which the BTA could independently determine a land value other than the value set by the fiscal officer or county auditor. The matter was remanded with instructions to modify the allocation.